2010

The State of Utah v. APOTEX CORPORATION; BAXTER HEALTHCARE CORPORATION; BOEHRINGERINGELHEIM CORPORATION; MALLINCKRODT INC.; CSL BEHRING; FOREST LABORATORIES, INC.; MORTON GROVE PHARMACEUTICALS, INC.; MUTUAL PHARMACEUTICAL COMPANY, INC.; NOVARTIS PHARMACEUTICALS CORPORATION; OTSUKA AMERICA, INC.; PFIZER, INC.; QUALITEST PHARMACEUTICALS, INC.; SCHERING-PLOUGH CORPORATION; SCHWARZ

PHARMA USA HOLDINGS, INC; TARO PHARMACEUTICALS USA, INC.; UPSHER-SMITH, INC.; and WYETH, INC., : Brief of Appellant

Utah Supreme Court

IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH, Plaintiff/Appellant, vs. APOTEX CORPORATION; BAXTER HEALTHCARE CORPORATION; BOEHRINGER INGELHEIM CORPORATION; MALLINCKRODT INC.; CSL BEHRING; FOREST LABORATORIES, INC.; MORTON GROVE PHARMACEUTICALS, INC.; MUTUAL PHARMACEUTICAL COMPANY, INC.; NOVARTIS PHARMACEUTICALS CORPORATION; OTSUKA AMERICA, INC.; PFIZER, INC.; QUALITEST PHARMACEUTICALS, INC.; SCHERING-PLOUGH CORPORATION; SCHWARZ PHARMA USA HOLDINGS, INC; TARO PHARMACEUTICALS USA, INC.; UPSHER-SMITH, INC.; and WYETH, INC., Defendants/Appellees.	Supreme Court Case No: 20100257-SC Third District Case No: 080907678 Judge Tyrone E. Medley

ADDENDUM TO BRIEF OF APPELLANT

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age health care expenses that are also eligible for coverage under Medicaid is excepted from ERISA preemption Mellor v Wasatch Crest Mut Ins Co, 2009 201 P.3d 1004, 622 Utah Adv Rep 20, 2009 UT 5 Insurance ⇨ 1117(3), States ⇨ 18 41

Group health insurance policy under employee benefit plans failed to comply with statute forbidding employee benefit plan from limiting or excluding coverage or payment for any health care for an individual who would otherwise be covered or entitled to benefits or services under terms of plan notwithstanding that plan specified that "services" covered by Medicaid were not excluded, where plan also precluded coverage for any expenses covered by a government program Mellor v Wasatch Crest Mut Ins Co, 2009, 201 P 3d 1004, 622 Utah Adv Rep 20, 2009 UT 5 Insurance ⇦ 2484, Insurance ⇨ 2525(1), Labor and Employment ⇦ 567, Labor and Employment ⇨ 569(2)

Terms of the group health insurance policy under employee welfare benefit plan did not operate to terminate insured's coverage when insured became eligible for Medicaid coverage, notwithstanding ambiguity in policy that precluded coverage for any expenses covered by government program, but did not exclude "services" covered by Medicaid, policy evidenced attempt to comply with nominal requirements of law while at same time circumventing actual requirement of providing coverage regardless of whether beneficiary was also covered by Medicaid Mellor v Wasatch Crest Mut Ins Co, 2009, 201 P 3d 1004, 622 Utah Adv Rep 20, 2009 UT 5 Insurance ⇨ 2525(1) Labor and Employment ⇦ 569(2)

§ 26–19–19. Direct payment to the department by third party

Research References

ALR Library

80 A L R 3rd 772, Personal Injury Recovery as Affecting Eligibility For, or Duty to Reimburse, Public Welfare Assistance

CHAPTER 20

UTAH FALSE CLAIMS ACT

§ 26–20–1. Title

This chapter is known as the "Utah False Claims Act."

Laws 1981, c 126, § 19, Laws 2007, c 48, § 1, eff April 30, 2007

Historical and Statutory Notes

Laws 2007, c 48, rewrote this section, which formerly provided "This chapter shall be known and may be cited as the 'False Claims Act'"

Research References

Encyclopedias

100 Am Jur Proof of Facts 3d 1, Proof of a Claim Arising from Off-Label Use of Prescription Medications

§ 26–20–2. Definitions

As used in this chapter.

(1) "Benefit" means the receipt of money goods, or any other thing of pecuniary value

(2) "Claim" means any request or demand for money or property

(a) made to any

(i) employee, officer, or agent of the state,

(ii) contractor with the state, or

(iii) grantee or other recipient, whether or not under contract with the state, and

(b) if

(i) any portion of the money or property requested or demanded was issued from or provided by the state, or

(ii) the state will reimburse the contractor, grantee, or other recipient for any portion of the money or property

(3) "False statement" or "false representation" means a wholly or partially untrue statement or representation which is

(a) knowingly made, and

(b) a material fact with respect to the claim

(4) "Knowing" and "knowingly"

(a) for purposes of criminal prosecutions for violations of this chapter, is one of the culpable mental states described in Subsection 26–20–9(1), and

(b) for purposes of civil prosecutions for violations of this chapter, is the required culpable mental state as defined in Subsection 26–20–9.5(1)

(5) "Medical benefit" means a benefit paid or payable to a recipient or a provider under a program administered by the state under

(a) Titles V and XIX of the federal Social Security Act,[1]

(b) Title X of the federal Public Health Services Act,[2]

(c) the federal Child Nutrition Act of 1966 as amended by P.L. 94–105, and

(d) any programs for medical assistance of the state

(6) "Person" means an individual, corporation, unincorporated association, professional corporation, partnership, or other form of business association

Laws 1981, c. 126, § 19, Laws 1986, c. 46, § 1, Laws 2007, c. 48, § 2, eff. April 30, 2007

[1] 42 U.S.C.A. § 701 et seq. and 42 U.S.C.A. § 1396 et seq.

[2] 42 U.S.C.A. § 300 et seq.

Historical and Statutory Notes

Laws 2007, c. 48, rewrote this section, which formerly provided:

"As used in this chapter:

"(1) 'Benefit' means the receipt of money, goods, or any other thing of pecuniary value.

"(2) 'False statement' or 'false representation' means a statement or representation which is knowingly and willfully made if the person making the statement or representation has knowledge of the falsity thereof.

"(3) 'Knowing' and 'knowingly' mean that a person is aware of the nature of his conduct and that his conduct is substantially certain to cause the intended result.

"(4) 'Medical benefit' means a benefit paid or payable to a recipient or a provider under a program administered by the state under Titles V and XIX of the federal Social Security Act, Title X of the federal Public Health Services Act,the federal Child Nutrition Act of 1966 as amended by P.L. 94-105 and any programs for medical assistance of the state.

"(5) 'Person' means an individual, corporation, unincorporated association, professional corporation, partnership, or other form of business association."

§ 26–20–4. Kickbacks or bribes prohibited

(1) For purposes of this section, kickback or bribe

(a) includes rebates, compensation, or any other form of remuneration which is

(i) direct or indirect,

(ii) overt or covert, or

(iii) in cash or in kind, and

(b) does not include a rebate paid to the state under 42 U S C Sec 1396r–8 or any state supplemental rebates

(2) A person may not solicit, offer, pay, or receive a kickback or bribe in return for or to induce

(a) the purchasing leasing or ordering of any goods or services for which payment is or may be made in whole or in part pursuant to a medical benefit program, or

(b) the referral of an individual to another person for the furnishing of any goods or services for which payment is or may be made in whole or in part pursuant to a medical benefit program

Laws 1981 c 126, § 19, Laws 1986, c 46, § 3, Laws 2007, c 48, § 3, eff April 30, 2007

Historical and Statutory Notes

Laws 2007, c 48 repealed and reenacted this section, which formerly provided

'A person may not solicit, offer pay, or receive a kickback or bribe in connection with the furnishing of goods or services for which payment is or may be made in whole or in part pursuant to a medical benefit program, or pay or receive a rebate of a fee or charge for referring an individual to another person for the furnishing of goods or services"

§ 26–20–5. False statements or false representations relating to qualification of health institution or facility prohibited—Felony

(1) A person may not knowingly, intentionally, or recklessly make, induce, or seek to induce the making of a false statement or false representation of a material fact with respect to the conditions or operation of an institution or facility in order that the institution or facility may qualify, upon initial certification or upon recertification, as a hospital, skilled nursing facility, intermediate care facility, or home health agency

(2) A person who violates this section is guilty of a second degree felony

Laws 1981, c 126, § 19, Laws 2007, c 48, § 4, eff April 30, 2007

Historical and Statutory Notes

Laws 2007, c 48, in subsec (1) substituted "may not knowingly, intentionally, or recklessly" for "shall not knowingly and willfully"

§ 26–20–7. False claims for medical benefits prohibited

(1) A person may not make or present or cause to be made or presented to an employee or officer of the state a claim for a medical benefit

(a) which is wholly or partially false, fictitious, or fraudulent,

(b) for services which were not rendered or for items or materials which were not delivered,

(c) which misrepresents the type, quality, or quantity of items or services rendered,

(d) representing charges at a higher rate than those charged by the provider to the general public

(e) for items or services which the person or the provider knew were not medically necessary in accordance with professionally recognized standards,

(f) which has previously been paid,

(g) for services also covered by one or more private sources when the person or provider knew of the private sources without disclosing those sources on the claim, or

(h) where a provider

(i) unbundles a product, procedure or group of procedures usually and customarily provided or performed as a single billable product or procedure into artificial components or separate procedures and

(ii) bills for each component of the product, procedure or group of procedures

(A) as if they had been provided or performed independently and at separate times, and

(B) the aggregate billing for the components exceeds the amount otherwise billable for the usual and customary single product or procedure

(2) In addition to the prohibitions in Subsection (1), a person may not

(a) fail to credit the state for payments received from other sources,

(b) recover or attempt to recover payment in violation of the provider agreement from

(i) a recipient under a medical benefit program, or

(ii) the recipient's family,

(c) falsify or alter with intent to deceive, any report or document required by state or federal law, rule, or Medicaid provider agreement,

(d) retain any unauthorized payment as a result of acts described by this section or

(e) aid or abet the commission of any act prohibited by this section

Laws 1981 c 126, § 19, Laws 1986, c 46, § 5 Laws 1987 c 92, § 35 Laws 2007, c 48, § 5 eff April 30 2007

Historical and Statutory Notes

Laws 2007 c 48, rewrote this section, which formerly provided

"(1) No person may make or present or cause to be made or presented to an employee or officer of the state a claim for a medical benefit, knowing the claim to be false, fictitious, or fraudulent

"(2) In addition, no person shall knowingly

"(a) file a claim for a medical benefit for services which were not rendered or for items or materials which were not delivered

"(b) file a claim for a medical benefit which misrepresents the type, quality, or quantity of items or services rendered,

"(c) file a claim for a medical benefit representing charges at a higher rate than those charged by the provider to the general public,

"(d) file a claim for a medical benefit for items or services which the person or the provider knew were not medically necessary in accordance with professionally recognized standards

"(e) file a claim for a medical benefit which has previously been paid,

"(f) fail to credit the state for payments received from other sources,

"(g) file a claim for a medical benefit for services also covered by one or more private sources when the person or provider knew of the private sources without disclosing those sources on the claim,

"(h) recover or attempt to recover payment from a recipient under a medical benefit program, or the recipient's family in violation of the provider agreement,

"(i) file a claim for a medical benefit where a provider divides an accepted multiple medical procedure into artificial components or single procedures requesting full medical benefits for performing those component procedures as if they had each been performed independently and at separate times,

"(j) falsify or alter with intent to deceive, any report or document required by state or federal law, rule, or medicaid provider agreement,

"(k) retain any unauthorized payment as a result of acts described by this section, or

"(l) aid or abet the commission of any act prohibited by this section"

United States Supreme Court

In general,

False claims act intent to cause government payment of false claim private entities using government funds, see Allison Engine Co Inc v U S ex rel Sanders 2008 128 S Ct 2123, 170 L Ed 2d 1030

Notes of Decisions

Jurisdiction 1

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1 Jurisdiction

Exercise of federal jurisdiction in State of Utah's Medicaid reimbursement action against drug manufacturer which manufacturer had removed from state court on federal-question grounds would disturb congressionally approved balance of federal and state judicial responsibilities requiring grant of state's remand motion even though exercise of federal jurisdiction would not attract horde of original filings, no actually disputed, substantial federal question was presented federal preemption did not apply, and no clear rule existed justifying removal of state Medicaid reimbursement actions Utah v Eli Lilly and Co 2007 509 F Supp 2d 1016 Removal Of Cases ⇐ 19(1) Removal Of Cases ⇐ 25(1)

No actually disputed, substantial federal question was presented in State of Utah's Medicaid reimbursement action against drug manufacturer, so as to warrant removal on that ground federal issues were not essential to adjudication of state's claims, grounded on its False Claims Act and common law manufacturer's raising of federal question was inadequate to confer federal jurisdic-

Note 1

tion mere presence of federal standards such as "medically accepted indications" did not confer jurisdiction absent federal remedy and Congress had specifically required states to seek reimbursement from liable third parties without providing such remedy Utah v Eli Lilly and Co , 2007, 509 F Supp 2d 1016 Removal Of Cases ⇐ 19(1), Removal Of Cases ⇐ 25(1)

§ 26–20–9. Criminal penalties

(1)(a) Except as provided in Subsection (1)(b) the culpable mental state required for a criminal violation of this chapter is knowingly, intentionally, or recklessly as defined in Section 76–2–103

(b) The culpable mental state required for a criminal violation of this chapter for kickbacks and bribes under Section 26–20–4 is knowingly and intentionally as defined in Section 76–2–103

(2) The punishment for a criminal violation of any provision of this chapter, except as provided under Section 26–20–5 is determined by the cumulative value of the funds or other benefits received or claimed in the commission of all violations of a similar nature, and not by each separate violation

(3) Punishment for criminal violation of this chapter, except as provided under Section 26–20–5, is a felony of the second degree, felony of the third degree class A misdemeanor, or class B misdemeanor based on the dollar amounts as prescribed by Subsection 76–6–412(1) for theft of property and services

Laws 1986, c 46, § 6, Laws 2007, c 48, § 6, eff April 30, 2007

Historical and Statutory Notes

Laws 2007, c 48 rewrote this section, which formerly provided

"(1) The punishment for violation of any provision of this chapter, except as provided under Section 26–20–5, is determined by the cumulative value of the funds or other benefits received or claimed in the commission of all violations of a similar nature, and not by each separate violation

"(2) Punishment for violation of this chapter, except as provided under Section 26–20–5, is as follows

"(a) as a felony of the second degree if the cumulative value of the funds or other benefits received or claimed in violation of this chapter exceeds $1,000,

"(b) as a felony of the third degree if the cumulative value of the funds or other benefits received or claimed in violation of this chapter exceeds $250 but does not exceed $1,000,

"(c) as a class A misdemeanor if the cumulative value of the funds or other benefits received or claimed in violation of this chapter exceeds $100 but does not exceed $250, or

"(d) as a class B misdemeanor if the cumulative value of the funds or other benefits received or claimed in violation of this chapter does not exceed $100 "

United States Supreme Court

False claims.

False claims act intent to cause government payment of false claim, private entities using government funds, see Allison Engine Co., Inc v U S ex rel Sanders, 2008, 128 S Ct 2123, 170 L Ed 2d 1030

§ 26–20–9.5. Civil penalties

(1) The culpable mental state required for a civil violation of this chapter is "knowing" or "knowingly" which:

(a) means that person, with respect to information

(i) has actual knowledge of the information,

(ii) acts in deliberate ignorance of the truth or falsity of the information, or

(iii) acts in reckless disregard of the truth or falsity of the information, and

(b) does not require a specific intent to defraud

(2) Any person who violates this chapter shall in all cases, in addition to other penalties provided by law, be required to

(a) make full and complete restitution to the state of all damages that the state sustains because of the person's violation of this chapter,

(b) pay to the state its costs of enforcement of this chapter in that case including but not limited to the cost of investigators, attorneys, and other public employees as determined by the state, and

(c) pay to the state a civil penalty equal to

(i) three times the amount of damages that the state sustains because of the person's violation of this chapter, and

(ii) not less than $5 000 or more than $10,000 for each claim filed or act done in violation of this chapter

(3) Any civil penalties assessed under Subsection (2) shall be awarded by the court as part of its judgment in both criminal and civil actions

(4) A criminal action need not be brought against a person in order for that person to be civilly liable under this section

Laws 1986, c 46, § 7, Laws 1987, c 92, § 36, Laws 2007 c 48 § 7 eff April 30 2007

Historical and Statutory Notes

Laws 2007, c 48, rewrote this section, which formerly provided

"(1) Any person who violates this chapter shall in addition to other penalties provided by law, be subject to the following civil penalties

"(a) in all cases, shall be required to make full and complete restitution to the state of all medical benefits improperly obtained,

"(b) in all cases, shall be required to pay the state its costs of enforcement of this chapter in that case, including but not limited to the cost of investigators attorneys, and other public employees, as determined by the Bureau of Medicaid Fraud,

"(c) may be required, in the discretion of the court to pay to the state a civil penalty not to exceed three times the amount of value improperly claimed or received as a medical benefit or

"(d) may be required, in the discretion of the court, to pay to the state a civil penalty of up to $2,000 for each claim filed or act done in violation of this chapter

"(2) Any civil penalties assessed under Subsection (1) shall be awarded by the court as part of its judgment in both criminal and civil actions

"(3) A criminal action need not be brought against a person in order for that person to be civilly liable under this section"

United States Supreme Court

False claims,

False claims act, intent to cause government payment of false claim, private entities using government funds, see Allison Engine Co, Inc v U S ex rel Sanders, 2008, 128 S Ct 2123 170 L Ed 2d 1030

§ 26–20–12. Violation of other laws

(1) The provisions of this chapter are

(a) not exclusive. and the remedies provided for in this chapter are in addition to any other remedies provided for under

(i) any other applicable law, or

(ii) common law, and

(b) to be liberally construed and applied to

(i) effectuate the chapter's remedial and deterrent purposes and

(ii) serve the public interest

(2) If any provision of this chapter or the application of this chapter to any person or circumstance is held unconstitutional

(a) the remaining provisions of this chapter shall not be affected and

(b) the application of this chapter to other persons or circumstances shall not be affected

Laws 1986, c 46 § 9, Laws 2007, c 48 § 8 eff April 30 2007

Historical and Statutory Notes

Laws 2007 c 48 repealed and reenacted this section, which formerly provided

"This chapter shall not be construed to prohibit or limit an action against a person for violation of any other law"

§ 26-20-13. Medicaid fraud enforcement

(1) This chapter shall be enforced in accordance with this section

(2) The department is responsible for

(a)(i) investigating and prosecuting suspected civil violations of this chapter, or

(ii) referring suspected civil violations of this chapter to the attorney general for investigation and prosecution and

(b) promptly referring suspected criminal violations of this chapter to the attorney general for criminal investigation and prosecution

(3) The attorney general has

(a) concurrent jurisdiction with the department for investigating and prosecuting suspected civil violations of this chapter, and

(b) exclusive jurisdiction to investigate and prosecute all suspected criminal violations of this chapter

(4) The department and the attorney general share concurrent civil enforcement authority under this chapter and may enter into an interagency agreement regarding the investigation and prosecution of violations of this chapter in accordance with this section, the requirements of Title XIX of the federal Social Security Act[1], and applicable federal regulations

(5) Any violation of this chapter which comes to the attention of any state government officer or agency shall be reported to the attorney general or the department All state government officers and agencies shall cooperate with and assist in any prosecution for violation of this chapter

Laws 2000 c 316, § 2 eff May 1, 2000 Laws 2007, c 48 § 9, eff April 30, 2007

1 42 U S C A § 1396 et seq

Historical and Statutory Notes

Laws 2007, c 48 rewrote this section, which formerly provided

"(1) This chapter shall be enforced in accordance with this section

"(2) The department shall be responsible for

"(a) investigating and prosecuting all civil violations of this chapter and

"(b) promptly referring suspected criminal violations of this chapter to the attorney general for criminal investigation and prosecution

"(3) The attorney general shall be responsible for

"(a) investigating criminal violations of this chapter that are reported to the attorney general by the department or others

"(b) promptly referring probable civil violations of this chapter that are not related to a criminal investigation or prosecution to the department for civil investigation and prosecution, and

"(c) prosecuting criminal violations of this chapter

"(4) The department and the attorney general may enter into an interagency agreement regarding the investigation and prosecution of violations of this chapter in accordance with this section, the requirements of Title XIX of the federal Social Security Act and applicable federal regulations"

Notes of Decisions

First amendment 1
Immunity 2
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1 First amendment

Neurologist who was criminally investigated and prosecuted by Utah's Medicaid Fraud Control Unit (MFCU) for 'upcoding' i e the practice of improperly billing Medicaid for a more expensive service than was actually provided to the patient failed to produce sufficient evidence that officials were substantially motivated as a response to her exercise of constitutionally protected conduct, or were even aware of such conduct as would support First Amendment retaliation claim Becker v Kroll 2004, 340 F Supp.2d 1230, affirmed in part, reversed in part and remanded 494 F 3d 904, on remand 2009 WL 819373 Constitutional Law ⇐ 1171, States ⇐ 79

2 Immunity

Utah's Governmental Immunity Act barred libel claim brought by neurologist who was criminally investigated and prosecuted by Utah's Medicaid Fraud Control Unit (MFCU) for "upcoding,' i e, the practice of improperly billing Medicaid for a more expensive service than was actually provided to the patient against MFCU officials, based solely upon publication of annual report on MFCU's website where neurologist failed to produce evidence sufficient to support a finding of fraud or malice in

the publication of report Becker v Kroll 2004 340 F Supp 2d 1230 affirmed in part reversed in part and remanded 494 F 3d 904, on remand 2009 WL 819373 Libel And Slander ⇐ 51(5)

Genuine issue of material fact existed as to whether alleged wrongful conduct of state officials occurred while they were acting in administrative and investigative capacities, precluding summary judgment for officials on basis of absolute immunity in civil rights action against them under §§ 1983 Becker v Kroll 2004, 340 F Supp 2d 1230 affirmed in part, reversed in part and remanded 494 F 3d 904 on remand 2009 WL 819373 Federal Civil Procedure ⇐ 2491 5

3 Malicious prosecution

Neurologist who was never arrested or incarcerated in connection with the filing of criminal charges of alleged Medicaid fraud was not seized within meaning of Fourth Amendment, as required for constitutional tort of malicious prosecution under §§ 1983 Becker v Kroll, 2007, 494 F 3d 904, on remand 2009 WL 819373 Arrest ⇐ 68(4) Civil Rights ⇐ 1088(5)

Genuine issue of material fact existed as to whether officials of Utah's Medicaid Fraud Control Unit (MFCU) knowingly targeted neurologist for prosecution without sufficient basis to believe there was probable cause she committed a crime, precluding summary judgment for officials on neurologist's §§ 1983 malicious prosecution claim, based on investigation and prosecution of her for "upcoding" i e , the practice of improperly billing Medicaid for a more expensive service than was actually provided to the patient Becker v Kroll, 2004, 340 F Supp 2d 1230, affirmed in part, reversed in part and remanded 494 F 3d 904 on remand 2009 WL 819373 Federal Civil Procedure ⇐ 2491 5

Neurologist's §§ 1983 malicious prosecution claim against officials of Utah's Medicaid Fraud Control Unit (MFCU), based on investigation and prosecution of neurologist for "upcoding' i e the practice of improperly billing Medicaid for a more expensive service than was actually provided to the patient, would be reviewed under due process standard of the Fourteenth Amendment rather than reasonableness standard of the Fourth Amendment, where neurologist was never incarcerated Becker v Kroll 2004, 340 F Supp 2d 1230 affirmed in part reversed in part and remanded 494 F 3d 904 on remand 2009 WL 819373 Constitutional Law ⇐ 4527(2), Searches And Seizures ⇐ 23 States ⇐ 79

State trial court's independent finding of probable cause was not fatal to neurologist's §§ 1983 malicious prosecution claim against officials of Utah's Medicaid Fraud Control Unit (MFCU), based on investigation and prosecution of neurologist for "upcoding," i e , the practice of improperly billing Medicaid for a more expensive service than was actually provided to the patient Becker v Kroll, 2004, 340 F Supp 2d 1230, affirmed in part, reversed in part and remanded 494 F 3d 904 on remand 2009 WL 819373 Civil Rights ⇐ 1088(5)

4 Subpoena

State officials' copying of neurologist's medical records through use of a subpoena in connection with investigation and prosecution of her for "upcoding,' i e , the practice of improperly billing for a more expensive service than was actually provided to the patient, did not violate neurologist's Fourth Amendment rights although officials' use of subpoena did not comply with state statutes, where use of subpoena did not invoke same protections as use of a warrant, given that neurologist read subpoena and understood that she could either produce her records immediately or appear in person a few days later Becker v Kroll, 2004, 340 F Supp 2d 1230, affirmed in part, reversed in part and remanded 494 F 3d 904, on remand 2009 WL 819373 Searches And Seizures ⇐ 75

§ 26-20-14. Investigations—Civil investigative demands

(1) The attorney general may take investigative action under Subsection (2) if the attorney general has reason to believe that

(a) a person has information or custody or control of documentary material relevant to the subject matter of an investigation of an alleged violation of this chapter,

(b) a person is committing, has committed, or is about to commit a violation of this chapter, or

(c) it is in the public interest to conduct an investigation to ascertain whether or not a person is committing, has committed, or is about to commit a violation of this chapter

(2) In taking investigative action, the attorney general may

(a) require the person to file on a prescribed form a statement in writing under oath or affirmation describing

(i) the facts and circumstances concerning the alleged violation of this chapter, and

(ii) other information considered necessary by the attorney general,

(b) examine under oath a person in connection with the alleged violation of this chapter, and

(c) in accordance with Subsections (7) through (18) execute in writing, and serve on the person, a civil investigative demand requiring the person to produce the documentary material and permit inspection and copying of the material

(3) The attorney general may not release or disclose information that is obtained under Subsection (2)(a) or (b), or any documentary material or other record derived from the information obtained under Subsection (2)(a) or (b), except:

(a) by court order for good cause shown;

(b) with the consent of the person who provided the information;

(c) to an employee of the attorney general or the department;

(d) to an agency of this state, the United States, or another state;

(e) to a special assistant attorney general representing the state in a civil action;

(f) to a political subdivision of this state; or

(g) to a person authorized by the attorney general to receive the information.

(4) The attorney general may use documentary material derived from information obtained under Subsection (2)(a) or (b), or copies of that material, as the attorney general determines necessary in the enforcement of this chapter, including presentation before a court.

(5)(a) If a person fails to file a statement as required by Subsection (2)(a) or fails to submit to an examination as required by Subsection (2)(b), the attorney general may file in district court a complaint for an order to compel the person to within a period stated by court order:

(i) file the statement required by Subsection (2)(a); or

(ii) submit to the examination required by Subsection (2)(b).

(b) Failure to comply with an order entered under Subsection (5)(a) is punishable as contempt.

(6) A civil investigative demand must:

(a) state the rule or statute under which the alleged violation of this chapter is being investigated;

(b) describe the:

(i) general subject matter of the investigation; and

(ii) class or classes of documentary material to be produced with reasonable specificity to fairly indicate the documentary material demanded;

(c) designate a date within which the documentary material is to be produced; and

(d) identify an authorized employee of the attorney general to whom the documentary material is to be made available for inspection and copying.

(7) A civil investigative demand may require disclosure of any documentary material that is discoverable under the Utah Rules of Civil Procedure.

(8) Service of a civil investigative demand may be made by:

(a) delivering an executed copy of the demand to the person to be served or to a partner, an officer, or an agent authorized by appointment or by law to receive service of process on behalf of that person;

(b) delivering an executed copy of the demand to the principal place of business in this state of the person to be served; or

(c) mailing by registered or certified mail an executed copy of the demand addressed to the person to be served:

(i) at the person's principal place of business in this state; or

(ii) if the person has no place of business in this state, to the person's principal office or place of business.

(9) Documentary material demanded in a civil investigative demand shall be produced for inspection and copying during normal business hours at the office of the attorney general or as agreed by the person served and the attorney general.

(10) The attorney general may not produce for inspection or copying or otherwise disclose the contents of documentary material obtained pursuant to a civil investigative demand except:

(a) by court order for good cause shown;

(b) with the consent of the person who produced the information;

(c) to an employee of the attorney general or the department;

(d) to an agency of this state, the United States, or another state;

(e) to a special assistant attorney general representing the state in a civil action;

(f) to a political subdivision of this state; or

(g) to a person authorized by the attorney general to receive the information.

(11)(a) With respect to documentary material obtained pursuant to a civil investigative demand, the attorney general shall prescribe reasonable terms and conditions allowing such documentary material to be available for inspection and copying by the person who produced the material or by an authorized representative of that person.

(b) The attorney general may use such documentary material or copies of it as the attorney general determines necessary in the enforcement of this chapter, including presentation before a court.

(12) A person may file a complaint, stating good cause, to extend the return date for the demand or to modify or set aside the demand. A complaint under this Subsection (12) shall be filed in district court and must be filed before the earlier of:

(a) the return date specified in the demand; or

(b) the 20th day after the date the demand is served.

(13) Except as provided by court order, a person who has been served with a civil investigative demand shall comply with the terms of the demand.

(14)(a) A person who has committed a violation of this chapter in relation to the Medicaid program in this state, or to any other medical benefit program administered by the state has submitted to the jurisdiction of this state.

(b) Personal service of a civil investigative demand under this section may be made on the person described in Subsection (14)(a) outside of this state.

(15) This section does not limit the authority of the attorney general to conduct investigations or to access a person's documentary materials or other information under another state or federal law, the Utah Rules of Civil Procedure, or the Federal Rules of Civil Procedure.

(16) The attorney general may file a complaint in district court for an order to enforce the civil investigative demand if:

(a) a person fails to comply with a civil investigative demand; or

(b) copying and reproduction of the documentary material demanded:

(i) cannot be satisfactorily accomplished; and

(ii) the person refuses to surrender the documentary material.

(17) If a complaint is filed under Subsection (16), the court may determine the matter presented and may enter an order to enforce the civil investigative demand.

(18) Failure to comply with a final order entered under Subsection (17) is punishable by contempt.

Laws 2007, c. 48, § 10, eff. April 30, 2007.

§ 26-20-15. Limitation of actions—Civil acts antedating this section—Civil burden of proof—Estoppel—Joint civil liability—Venue

(1) An action under this chapter may not be brought after the later of:

(a) six years after the date on which the violation was committed; or

(b) three years after the date an official of the state charged with responsibility to act in the circumstances discovers the violation, but in no event more than ten years after the date on which the violation was committed.

(2) A civil action brought under this chapter may be brought for acts occurring prior to the effective date of this section if the limitations period set forth in Subsection (1) has not lapsed.

(3) In any civil action brought under this chapter the state shall be required to prove by a preponderance of evidence, all essential elements of the cause of action including damages.

(4) Notwithstanding any other provision of law, a final judgment rendered in favor of the state in any criminal proceeding under this chapter, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any civil action under this chapter which involves the same transaction.

(5) Civil liability under this chapter shall be joint and several for a violation committed by two or more persons

(6) Any action brought by the state under this chapter shall be brought in district court in Salt Lake County or in any county where the defendant resides or does business

Laws 2007, c 48 § 11 eff April 30, 2007

CHAPTER 21

HEALTH CARE FACILITY LICENSING AND INSPECTION ACT

Cross References

Integrated health systems, contract negotiation standards, see § 13–5b–103

Medical records requests for copies, see § 26–6b–3 4

Municipal land use development, defining residential facility for persons with a disability, see § 10–9a–103

Law Review and Journal Commentaries

Assisted living in Utah A brief overview for consumers Mary Jane Ciccarello, Joanne Wetzler, 19 Utah B J 24 (Feb 2006)

§ 26–21–1. Title

Cross References

Disabilities, residences for certain persons, see § 17–27a–519

Human services licensing, exclusions, see § 62A–2–110

Residences for persons with a disability, see § 10–9a–520

Standardized health benefit plan cards , see § 31A–22–636

§ 26–21–2. Definitions

As used in this chapter

(1) "Abortion clinic" means a facility, other than a general acute or specialty hospital, that performs abortions and provides abortion services during the second trimester of pregnancy

(2) "Activities of daily living' means essential activities including

(a) dressing,

(b) eating,

(c) grooming,

(d) bathing,

(e) toileting,

(f) ambulation

(g) transferring, and

(h) self–administration of medication

ADDENDUM B

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IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

THE STATE OF UTAH , Plaintiff, vs. APOTEX CORPORATION; BAXTER INTERNATIONAL, INC.; BOEHRINGER INGELHEIM CORPORATION; MALLINCKRODT INC.; CSL BEHRING; FOREST LABORATORIES, INC., MORTON GROVE PHARMACEUTICALS,	AMENDED COMPLAINT AND JURY DEMAND Civil No. 080907678 Judge Tyrone E. Medley

INC.; MUTUAL PHARMACEUTICAL COMPANY, INC.; NOVARTIS PHARMACEUTICALS CORPORATION; OTSUKA AMERICA, INC.; PFIZER, INC.; QUALITEST PHARMACEUTICALS, INC.; SCHERING-PLOUGH CORPORATION; SCHWARZ PHARMA USA HOLDINGS, INC; TARO PHARMACEUTICALS USA, INC.; UPSHER-SMITH, INC.; and WYETH, INC.; Defendants.	)

Plaintiff, the State of Utah (hereinafter "Plaintiff" or "the State"), by and through its Attorney General Mark L. Shurtleff, hereby complains of the above-named Defendants and alleges, on information and belief, the following:

INTRODUCTION

1. The Defendants have engaged in false, misleading, wanton, unfair, and deceptive acts and practices in the pricing and marketing of their prescription drug products. The Defendants' fraudulent pricing and marketing of their prescription drugs have caused the State's Medicaid program ("Utah Medicaid") to pay grossly excessive prices for the Defendants' prescription drugs. Utah Medicaid is administered by the Division of Health Care Financing within the single state agency, the Utah Department of Health.

2. Fair and honest drug pricing is a matter of great importance to the State and its citizens. Expenditures by Utah Medicaid for prescription drug reimbursement have increased dramatically in the past several years as a result, in part, of Defendants' fraudulent pricing scheme. Each year Utah Medicaid spends tens of millions of dollars on prescription drugs. In fiscal year 2005 alone, Utah Medicaid spent $207.6 million on prescription drugs. Significant increases in prescription drug costs in recent years have contributed to a health care funding crisis within the State that requires action to ensure fair dealing between the Defendants and the State.

3. The State is accountable to its citizens and taxpayers for how it spends limited State resources, and it is obligated to pursue any party whose unlawful conduct has led to the excessive expenditure of State funds. Consequently, the State, by and through its Attorney General, brings this action to recover amounts overpaid for prescription drugs by Utah Medicaid, including both pharmacy-dispensed and physician-administered drugs, as a result of the fraudulent and wanton conduct of Defendants.

4. This lawsuit seeks legal redress for the fraudulent and wanton marketing and pricing conduct of Defendants, who have profited from their wrongful acts and practices at the expense of the State.

JURISDICTION AND VENUE

5. Jurisdiction over the subject matter of this cause of action is based upon the Utah False Claims Act, Title 26, Chapter 20 of the Utah Health Code, which provides remedies to redress Defendants' actions under Utah Code Annotated § 26-20-1 et seq.

6. Personal jurisdiction over these Defendants is proper under the Utah Long Arm Statute as codified in §§ 78-27-22 and 78-27-24 of the Utah Code Annotated.

7. Venue is proper in the Third Judicial District and Salt Lake County pursuant to Utah Code Annotated § 78-13-7 in that the false or fraudulent Utah Medicaid claims caused to be filed by Defendants' unlawful acts were filed in Salt Lake County with the State of Utah, its departments, agencies, instrumentalities and contractors.

8. This case alleges causes of action which arise exclusively under Utah law and not the laws of the United States. To the extent that federal laws are implicated, the State disavows such intent. Specifically, the State makes no claim for reimbursement of Medicare Part B co-payments for "dual eligible" individuals.

PARTIES

9. Plaintiff is the State of Utah. The Utah Attorney General is authorized to initiate and maintain this action pursuant to Utah Code Annotated § 67-5-1(18).

10. The Defendants listed in paragraphs 11 through 39 are engaged in the business of manufacturing, distributing, marketing and/or selling prescription drugs that are reimbursed by Utah Medicaid. A comprehensive analysis is currently in process to

identify each Defendant's prescription drugs reimbursed by Utah Medicaid for which a claim is made in this litigation; however, a few representative examples are listed in the attached Exhibit A.

Defendant Apotex

11. Defendant Apotex Corporation. ("Apotex") is a Delaware corporation with its principal place of business located at 1776 Broadway Suite 1800, New York, NY 10019. Apotex Corporation is a wholly-owned United States subsidiary of Apotex, Inc., a Canadian corporation with its principal place of business located at 150 Signet Drive, Weston, Toronto, Ontario, Canada M9L 1T9.

The Baxter Defendants

12. Defendant Baxter International, Inc. ("Baxter International") is a Delaware corporation with its principal place of business located at One Baxter Parkway, Deerfield, IL 60015-4633.

13. Defendant Baxter Healthcare Corporation ("Baxter Healthcare"), a wholly-owned subsidiary of Baxter International, Inc, is a Delaware corporation with its principal place of business located at One Baxter Parkway, Deerfield, IL 60015.

The Boehringer Defendants

14. Defendant Boehringer Ingelheim Corporation ("Boehringer") is a corporation organized under the laws of Nevada with its principal place of business located at 900 Ridgebury Road, Ridgefield, CT 06877, and is the parent company of Roxane, BIPI, and Ben Venue.

15. Defendant Roxane Laboratories, Inc. ("Roxane"), a subsidiary of Boehringer Ingelheim Corporation, is a Delaware corporation with its principal place of business located at 1809 Wilson Road, Columbus, OH 43228-9579.

16. Defendant Boehringer Ingelheim Pharmaceuticals, Inc. ("BIPI"), a subsidiary of Boehringer Ingelheim Corporation, is a Delaware corporation with its principal place of business located at 900 Ridgebury Road, Ridgefield, CT 06877.

17. Defendant Ben Venue Laboratories, Inc. ("Ben Venue"), a subsidiary of Boehringer Ingelheim Corporation, is a Delaware corporation with its principal place of business located at 300 Northfield Road, Bedford, OH 44146.

18. Boehringer, Roxane, BIPI and Ben Venue (collectively "the Boehringer Defendants") are diversified healthcare companies that individually, and/or in combination with one another, engage in the business of manufacturing, distributing, marketing, and/or selling prescription drugs that are reimbursed by state Medicaid agencies nationwide.

Defendant Mallinckrodt Inc.

19. Defendant Mallinckrodt Inc. is a Delaware corporation. Its headquarters are located at 675 McDonnell Boulevard, Hazelwood MO 63042. Mallinckrodt Inc. is the U.S. subsidiary of Covidien Ltd., a Bermuda corporation with its principal place of business located at 131 Front Street, Hamilton HM 12, Bermuda.

Defendant CSL Behring

20. Defendant CSL Behring ("CSL"), formerly known as ZLB Behring, is a Pennsylvania corporation with its principal place of business located at 1020 First Avenue, P.O. Box 61501, King of Prussia, PA 19406. CSL Behring is a wholly-owned subsidiary of CSL Limited, an Australian corporation with its principal place of business located at 45 Poplar Road, Parkville Victoria 3052, Australia.

Defendant Forest

21. Defendant Forest Laboratories, Inc. ("Forest") is a Delaware corporation with its principal place of business located at 909 Third Avenue, New York, NY 10022-4731.

Defendant Morton Grove

22. Defendant Morton Grove Pharmaceuticals, Inc. ("Morton") is an Illinois corporation with its principal place of business located at 6451 W Main Street, Morton Grove, IL 60053.

Defendant Mutual

23. Defendant Mutual Pharmaceutical Company, Inc. ("Mutual") is a Pennsylvania corporation with its principal place of business located at 100 Orthodox Street, Philadelphia, PA 19124.

Novartis Defendant

24. Defendant Novartis Pharmaceuticals Corporation ("Novartis") is a Delaware corporation with its principal place of business located at One Health Plaza, East Hanover, NJ 07936-1080.

Defendant Otsuka

25. Defendant Otsuka America, Inc ("Otsuka") is the US holding company of Otsuka Pharmaceutical Co., Ltd. a corporation with its principal place of business located at One Embarcadero Center, Suite 2020, San Francisco, CA. 94111.

The Pfizer Defendants

26. Defendant Pfizer, Inc. ("Pfizer") is a Delaware corporation with its principal place of business located at 235 East 42nd Street, New York, NY 10017. With the merger of Pfizer and Pharmacia Corporation in 2003, Pfizer became the largest drug company in the world today.

27. Defendant Pharmacia Corporation ("Pharmacia") is a Delaware corporation with its principal place of business located at 235 East 42nd Street, New York, NY 10017-5755. .

28. Defendant Pharmacia & Upjohn Company Corporation ("P & U"), a subsidiary of Pharmacia Corporation, is a Delaware corporation with its principal place of business located at 235 E. 42nd Street, New York, NY 10017-5703.

29. Defendant G.D. Searle, L.L.C. ("Searle"), a subsidiary of Pharmacia Corporation, is a Delaware limited liability company with its principal place of business located at 4901 Searle Parkway, Skokie, IL 60077-2919.

30. Defendant Agouron Pharmaceuticals, Inc. ("Agouron") is a California corporation with its principal place of business located at 10777 Science Center Drive, San Diego, CA 92121.

31. Pfizer, Pharmacia, P & U, Searle and Agouron (collectively, the "Pfizer Defendants") are diversified healthcare companies that individually, and/or in combination with one another, engage in the business of manufacturing, distributing, marketing, and/or selling prescription drugs that are reimbursed by state Medicaid agencies nationwide.

Defendant Qualitest

32. Defendant Qualitest Pharmaceuticals, Inc. ("Qualitest") is an Alabama corporation with its principal place of business located at 130 Vintage Drive NE, Huntsville, AL 35811.

Defendant Schwarz

33. Defendant Schwarz Pharma USA Holdings, Inc. ("Schwarz") is a Delaware corporation with its principal place of business located at 103 Foulk Rd Suite 202, Wilmington, DE 19803. Schwarz is a wholly-owned U.S. subsidiary of Schwarz Pharma AG, a German corporation with its principal place of business located at Alfred-Nobel-Straße, 10 Monheim, Germany.

Defendant Taro

34. Defendant Taro Pharmaceuticals USA, Inc. ("Taro"), a New York corporation with its principal place of business located at 3 Skyline Drive, Hawthorne, NY 10532.

Defendant Upsher-Smith

35. Defendant Upsher-Smith, Inc. ("Upsher-Smith") is a Minnesota corporation with its principal place of business located at 13700 1st Ave, N, Minneapolis, MN 55441.

The Schering Defendants

36. Defendant Schering-Plough Corporation ("Schering-Plough") is a New Jersey corporation with its principal place of business located at 2000 Galloping Hill Road, Kenilworth, NJ 07033.

37. Defendant Warrick Pharmaceuticals Corporation ("Warrick"), a wholly-owned subsidiary of Schering-Plough, is a Delaware corporation with its principal place of business located at 12125 Moya Blvd., Reno, NV 89506-2600.

The Wyeth Defendants

38. Defendant Wyeth, Inc. ("Wyeth"), formerly American Home Products Corp., is a Delaware corporation with its principal place of business located at Five Giralda Farms, Madison, NJ 07940.

39. Defendant Wyeth Pharmaceuticals, Inc. ("Wyeth Pharm"), a division of Wyeth, is a Delaware corporation with its principal place of business located at 500 Arcola Road, Collegeville, PA 19426.

NATURE OF THE CASE

40. This is a civil action for damages and civil penalties pursuant to the Utah False Claims Act, Utah Code Annotated § 26-20-1 et seq., and Utah common law. No federal claims are asserted.

FACTUAL BACKGROUND

The Utah Medicaid Program

41. Utah Medicaid is a state-administered program with federal matching funds that pays for medical care, including prescription drug benefits, for Utah's low-income and disabled citizens. Utah Medicaid currently covers about 300,000 individuals. Prescription drug benefits represent about 14% of Utah Medicaid's annual cost of approximately $1.5 billion. The prescription drug benefit cost has increased dramatically in recent years from $47.5 million in 1996 to $207.6 million in 2005, an increase of 437% in nine years or a compounded rate of 17.8% per year.

42. Utah Medicaid reimburses medical providers, including pharmacies and physicians, pursuant to statutory and administrative guidelines and formulae for drugs prescribed for, and dispensed or administered to, Utah Medicaid recipients.

43. Reimbursement amounts for prescription drugs under Utah Medicaid are based on pricing information supplied by Defendants to industry reporting services. This information includes the following price indices: (I) Average Wholesale Price ("AWP"), which is commonly understood as the average price charged by wholesalers to retailers, such as hospitals, doctors and pharmacies, for prescription drugs, (ii) Wholesale Acquisition Cost ("WAC"), which is commonly understood as the average price paid by wholesalers to the manufacturers for prescription drugs. and (iii) on occasion (but prior to 2003), Direct Price, which is commonly understood as the price charged by drug manufacturers to non-

wholesaler customers for prescription drugs. At all times relevant to this action, Defendants were aware of Utah Medicaid's drug reimbursement guidelines, formulae and procedures for prescription drugs.

The Defendants' Reporting of Inflated Pricing Information

44. Defendants knowingly, willfully, wantonly, and/or intentionally provided, or caused to be provided, false and inflated AWP, WAC, and/or Direct Price information for their respective drugs to various nationally known drug industry reporting services, including First DataBank (a/k/a Blue Book), Medical Economics, Inc. (a/k/a Red Book), and Medispan. These reporting services provide the pricing information to various third party payers, such as Utah Medicaid, who have contracted to receive the pricing data as a basis to determine reimbursement amounts to the providers who dispense or administer the drugs to Utah Medicaid patients. Given the tens of thousands of separate National Drug Codes ("NDCs") and the hundreds of thousands of prescription drug claims electronically filed each month with Utah Medicaid, the State has no other feasible alternative to relying on these drug industry reporting services. The State quite literally relies on the honesty and fair dealing of the pharmaceutical manufacturers in reporting their pricing information to these drug industry reporting services. Pharmaceutical manufacturers are keenly aware of this reliance and some, including the Defendants, have chosen to exploit it to their benefit and the detriment of taxpayer-funded Medicaid.

45. Utah Medicaid purchased and utilized the Defendants' published AWP, WAC, and/or Direct Price information from First DataBank (Blue Book), and Medical Economics, Inc. (Red Book). The information from Blue Book was and is used by Utah Medicaid with respect to reimbursement for pharmacy-dispensed drugs. At all relevant times to this action, Utah Medicaid relied upon the AWP, WAC, and/or Direct Price provided by Defendants to the industry reporting services in determining the amount Utah Medicaid reimburses providers.

46. Defendants knew that the false and deceptive inflation of AWP, WAC, and/or Direct Price for their drugs would cause Utah Medicaid to pay excessive amounts for these drugs. Defendants' inflated AWPs, WACs, and Direct Prices greatly exceeded the actual prices at which they sold their drugs to retailers (physicians, hospitals, and pharmacies) and wholesalers. Defendants' reported AWPs, WACs, and/or Direct Prices were false and misleading and bore no relation to any price, much less a wholesale or actual sales price. A few representative examples are listed in the attached Exhibit A.

47. Defendants knowingly, willfully, wantonly, and/or intentionally concealed the true AWP, WAC, and/or Direct Price information for their respective drugs from Utah Medicaid. Each Defendant knows its own AWP, WAC, and Direct Price which it reports to the industry reporting services for use by third party payers, including Utah Medicaid and other state Medicaid programs. Each Defendant also knows whether the prices it reports to the reporting services accurately and truthfully represent the actual prices as reflected

by market experience and conditions. Unless governmental or industry surveys, lawsuits, or criminal or regulatory investigations publicly reveal the true AWP, WAC, or Direct Price for a particular drug at issue, Utah Medicaid, like other state Medicaid programs, is not privy to the actual market prices which can then be compared to the reported prices. Defendants have concealed true market pricing information from the State for the purpose of avoiding detection of the fraudulent scheme described herein.

48. Defendants used undisclosed discounts, rebates, charge-backs and other inducements which had the effect of lowering the actual wholesale or sales prices charged to their customers as compared to the reported prices. In addition, Defendants employed secret agreements to conceal the lowest prices charged for their pharmaceutical products. As a result of these concealed inducements and agreements, Defendants have prevented third parties, including Utah Medicaid, from determining the true prices it charges its customers.

Defendants' Marketing of the "Spread"

49. Defendants refer to the difference between the reported AWP and WAC, on the one hand, and the actual price of a drug, on the other, as the "spread" or, alternatively, "return to practice" or "return on investment." Defendants knowingly and intentionally created a "spread" on their drugs and used the "spread" to increase their sales and market share of their drugs, thereby increasing their profits. Defendants induced physicians and pharmacies to purchase their drugs, rather than a competitor's drugs, by persuading them

that the larger "spread" on Defendants' drugs would allow the providers to receive more money, and thereby make more of a profit, through higher reimbursement at the expense of Utah Medicaid.

50. Defendants manipulated and controlled the size of the "spread" on their respective drugs by both increasing their reported AWPs, WACS, and Direct Prices and decreasing their actual prices to wholesalers and providers over time.

51. In addition to manipulating the reported AWP, WAC, and/or Direct Price, Defendants used free goods, educational grants and other incentives to induce providers to purchase their drugs, all of which lowered the actual prices of the Defendants' drugs, resulting in increased profits for providers, as well as increased market share and profits for the Defendants, at the expense of Utah Medicaid.

52. The unfair, fraudulent, wanton, and deceptive practices engaged in by the Defendants in creating and reporting, or causing to be reported, false and inflated AWP, WAC, and/or Direct Price information for their drugs, or otherwise concealing actual pricing information, and marketing the "spread" on their drugs as an inducement to providers to utilize Defendants' drugs, has resulted in the State paying tens of millions of dollars in excess Medicaid payments, while at the same time enriching Defendants with excessive, unjust and illegal profits primarily from the resulting increased sales of their drugs.

53. Drug manufacturers are aware of the AWPs reported by their competitors and of the actual sales prices of their competitors' products. Drug manufacturers manipulate their

own AWPs in order to gain or maintain a competitive advantage in the market for their products.

54. Some of the conduct described herein goes back over 10 years prior to the filing of the original complaint in this action. As explained above, however, the nature and extent of the fraudulent scheme were not known to the State because information concerning the true prices which should have been reported to the reporting services was concealed and not publicly available. It has only been through recent regulatory investigations, criminal actions, and civil actions that the impact of the fraudulent scheme on the State has been indicated or revealed. Even today, the true market prices for many of the drugs in question for the entire time period at issue are not known by the State.

55. Additionally, it would be impractical, if not impossible, to list in this Complaint, for the entire time period that the inflated pricing scheme has been in effect, the true market price as compared to the reported price for each NDC in question. It is not unusual for a drug manufacturer to report fluctuating prices for a particular drug on multiple occasions within a particular year, month, week, or even day. To display pricing reports for all of the Defendants and all of the NDCs in question over a ten-year-plus period would be a massive undertaking. Limitations of time and space do not permit that information, even if it were available, to be set forth in this pleading; however, some representative examples are listed in the attached Exhibit A.

56. For purposes of specificity of pleading, particularly with respect to the fraud allegations, suffice it to say that Defendants are and have been on notice of the claims asserted herein as a result of the many investigations and actions undertaken around the country on this same subject. Indeed, each Defendant should know without further allegation from the State exactly how its reported prices compare to its true prices and whether it has engaged in an inflated pricing scheme regarding prescription drugs.

FIRST CLAIM FOR RELIEF

(Restitution, Costs and Civil Penalties under the Utah False Claims Act)

57. Plaintiff incorporates paragraphs 1 through 56 as if fully set forth herein, and further alleges as follows:

58. Defendants violated the Utah False Claims Act as codified in the Utah Health Code at Title 26, Chapter 20 of the Utah Code Annotated. Defendants issued false and inflated AWP, WAC, and/or Direct Price information for publication by the industry reporting services, in violation of Utah Code Annotated §§ 26-20-3 and 26-20-7. Because of Defendants' fraudulent conduct and misrepresentations, Utah Medicaid relied on the false information in setting prescription drug reimbursement rates. Defendants "knowingly" acted in deliberate ignorance or reckless disregard of the truth, and in so doing, caused the State to pay false claims due to the grossly excessive reimbursements for Defendants' prescription drugs.

59. Under Utah Code Annotated § 26-20-9.5, Defendant is liable for the following damages:

a. Full and complete restitution to the state of all damages that the State sustained;

b. The costs of enforcement, including but not limited to the cost of investigators and attorneys;

c. A civil penalty equal to three times the restitution amount; and

d. A civil penalty of $5,000 to $10,000 for each false claim filed.

60. These costs and penalties are in addition to and not a substitute for other damages caused by Defendants' actions.

SECOND CLAIM FOR RELIEF

(Common Law Fraudulent Misrepresentation)

61. Plaintiff incorporates paragraphs 1 through 60 as if fully set forth herein, and further alleges as follows:

62. Defendants committed fraud against the State and its single state agency administering Utah Medicaid, the Utah Department of Health. Defendants reported or caused to be reported AWP, WAC, and/or Direct Price for their respective products on a periodic and continuing basis for publication and dissemination to third party payers, including Utah Medicaid and other state Medicaid programs. Defendants knew that the AWP, WAC, and/or Direct Price information that they provided and caused to be reported was false and material to the determination of Utah Medicaid reimbursement rates.

63. Defendants misrepresented the pricing information with the intent of inducing Utah Medicaid to rely on the false information in setting prescription drug reimbursement rates.

64. Utah Medicaid reasonably relied on the false pricing data in setting prescription drug reimbursement rates and making payment based on said rates. Defendants' misrepresentations are continuing, as they regularly and periodically continue to issue false and inflated AWP, WAC, and/or Direct Price information for publication by the industry reporting services.

65. As a result of Defendants' fraudulent conduct, the State has been damaged by paying grossly excessive amounts for Defendants' prescription drugs.

66. By engaging in the acts and practices described above, the Defendants have engaged and continue to engage in repeated fraudulent acts and practices in violation of Utah common law.

67. Defendants' conduct was and is knowing, intentional, gross, oppressive, malicious, wanton, and/or committed with the intention to cause injury. These actions subject Defendants to an award of punitive damages sufficient to punish the Defendants and make an example of them.

JURY DEMAND

The State respectfully requests a trial by jury pursuant to Rule 38, Utah R. Civ. Proc.

PRAYER FOR RELIEF

Wherefore, Plaintiff, the State of Utah, prays for relief as follows:

1. For the costs of enforcement pursuant to § 26-20-9.5(2)(b), Utah Code Ann.;

2. For an award of full and complete restitution to the State in such amount as is proved at trial;

3. For punitive damages for the wanton and reckless conduct as outlined herein and as an example for the benefit of all other drug manufacturers that wrongly misrepresent the prices of their products to the detriment of Utah Medicaid;

4. For civil penalties pursuant to § 26-20-9.5(2)(c), Utah Code Ann., equal to:

   a. Three times the restitution amount; and

   b. $5,000 to $10,000 for each false claim filed with Utah Medicaid.

5. For an award of costs and prejudgment interest; and

6. For such other and further relief as may be justified and which Plaintiff may be entitled to by law including, but not limited to, all court costs, witness fees and deposition fees.

Respectfully SUBMITTED and DATED this 10th day of June, 2008.

MARK L. SHURTLEFF
Attorney General of Utah

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Chief Deputy Attorney General

ROBERT STEED
Assistant Attorney General
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ATTORNEYS FOR THE STATE OF UTAH

CERTIFICATE OF SERVICE

I hereby certify that on the 10 day of June, 2008, I served the attached documents (Amended Complaint and Jury Demand, and Notice of Amendment) by mail on the following:

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EXHIBIT A

EXHIBIT A

Through the following list, the State of Utah intends to capture not only the drug names listed, but also all variations of the drug names which incorporate prefixes, suffixes, modifiers, supplements, application nomenclatures and/or drug delivery methods, to the extent not already specified

APOTEX DEFENDANTS
ACYCLOVIR
ALENDRONATE
AMLODIPINE
BALSALAZID
BENAZEPRIL
BETAXOLOL
BUPROPION
BUTORPHANOL
CAPTOPRIL
CARBAMAZEPINE
CARBIDOPA
CARVEDILOL
CEFAZOLIN
CEFEPIME
CEFOXITIN
CEFTRIAXON
CEFUROXIME
CETIRIZINE
CHLORHEXIDINE
CICLOPIROX
CILOSTAZOL
CIMETIDINE
CIPROFLOXA
CITALOPRAM
CLARITHROM
CLONAZEPAM
CLOPIDPGREL
CROMOLYN
CYCLOSPORINE
DESMOPRESS
DICLOFENAC
DILTIAZEM
DIVALPROEX
DOXAZOSIN
ENALAPRIL
EPLERENONE
ETODOLAC
FLUCONAZOLE
FLUNISOLIDE
FLUOXETINE
FLUPHENAZINE
FLUTICASON
FLUVOXAMINE
GABAPENTIN
GEMFIBROZIL
GLIPIZIDE
HALOPERIDOL

EXHIBIT A

IPRATROPIUM
KETOCONAZOLE
KETOTIFEN
LACTULOSE
LEFLINOMID
LISINOPRIL
LITHIUM CA
LORATADINE
LOVASTATIN
MEGESTROL
MELOXICAM
METFORMIN
MIDAZOLAM
MIDODRINE
MIRTAZAPINE
MORPHINE
NIZATIDINE
OFLOXACIN
OMEPRAZOLE
ONDANSETRON
OXAPROZIN
OXCARBAZEPINE
OXYBUTYNIN
PAROXETINE
PENTOXIFYLLINE
PRAVASTATIN
QUINAPRIL
RANITIDINE
SELEGILINE
SERTRALINE
SOTALOL
TERAZOSIN
TICLOPIDIN
TIMOLOL
TIZANIDINE
TOBRAMYCIN
TORSEMIDE
TRAMADOL
TRAZODONE
TRIAMETERENE
TRIANTERENE
ZINISAMIDE
ZOLPIDEM F
ZONISAMIDE
BAXTER DEFENDANTS
ACETIC ACID
ALDOCLOR
ALDOMET
ALDORIL
AMERINET
AMIKACIN
AMINOACETI

EXHIBIT A

AMINOPHYLL
AMPICILLIN
AQUA-MEPHY
ARALAST
ATIVAN
ATROPINE
AZITHROMYC
BEBULIN
BENEMID
BLOCADREN
BUMINATE
CANCIDAS
CEFAZOLIN
CEFOXITIN
CEFTRIAXON
CEFUROXIME
CERNEVIT
CHIBROXIN
CHLORPROMA
CLINDAMYCI
CLINORIL
COGENTIN
COL-BENEMI
CORTONE
COSMEGEN
COSOPT
COZAAR
CRIXIVAN
CUPRIMINE
CYANOCOBAL
CYCLOPHOSP
DARANIDE
DECADRON
DECASPRAY
DEMSER
DEXAMETHAS
DEXTROSE
DIAZEPAM
DIGOXIN
DIPHENHYDR
DIUPRES
DIURIL
DOLOBID
DOXYCYCLIN
DURAMORPH
EDECRIN
ELAVIL
ELSPAR
EMEND
EPINEPHRIN
ERYTHROMYC
FAMOTIDINE

EXHIBIT A

FEIBA VH I
FENTANYL C
FLEXERIL
FLOROPRYL
FOSAMAX
FUROSEMIDE
GAMMAGARD
GENTAMICIN
GLYCOPYRRO
HEMOFIL
HEPARIN
HEP-LOCK
HEPTAVAX-B
HUMORSOL
HYDELTRA
HYDROCORTI
HYDRODIURI
HYDROMORPH
HYDROPRES-
HYDROXYZIN
HYZAAR
INDOCIN
INFUMORPH
INTRALIPID
INVANZ
INVERSINE
ISENTRESS
JANUMET
JANUVIA
KETOROLAC
LACRISERT
LACTATED
LIDOCAINE
LORAZEPAM
LOSEC
MAXALT
MEFOXIN
MEPERIDINE
MEPHYTON
METHYLDOPA
METOCLOPRA
METRONIDAZ
MEVACOR
MIDAMOR
MIDAZOLAM
MILRIONONE
MINTEZOL
M-M-R II V
MODURETIC
MONISTAT D
MORPHINE
MUSTARGEN

EXHIBIT A

MYOCHRYSIN
NALLPEN
NEODECADRO
NEOSTIGMIN
NOROXIN
NUTREN
ONDANSETRO
OXYTOCIN 1
PENICILLIN
PEPCID
PERIACTIN
PHENERGAN
PHENOBARBI
PHENYTOIN
PLENDIL
PNEUMOVAX
POTASSIUM
PRILOSEC
PRIMAXIN
PRINIVIL
PRINZIDE
PROCHLORPE
PROMETHAZI
PROPECIA
PROSCAR
RECOMBINAT
RECOMBIVAX
REGLAN 5MG
REPLETE
RINGER'S L
ROBINUL
SINEMET
SINGULAIR
SODIUM CHL
STERILE WATER
STROMECTOL
SULFAMETHO
SYPRINE
THIAMINE
TIMOLIDE
TIMOPTIC
TONOCARD
TRANSDERM
TRAVASOL
TRAVASORB
TRIAVIL
TRUSOPT
URECHOLINE
VANCOCIN
VANCOMYCIN
VAQTA
VASERETIC

EXHIBIT A

VASOTEC
VIOXX
VIVACTIL
WATER
ZOCOR
ZOSTAVAX
BOEHRINGER DEFENDANTS
ACARBOSE
ACETAMINOPHEN
ACETAZOLAM
ACETYLCYST
ACYCLOVIR
ADRIAMYCIN
AGGRENOX
ALBUTEROL
ALPRAZOLAM
ALUMINUM
ALUPENT
AMIKACIN S
AMINOPHYLL
AMITRIPTYL
APTIVUS
ATROVENT
AZATHIOPRI
BALSALAZID
BUMETANIDE
BUTORPHANO
CAFCIT
CALC CARB
CALCIUM GLUCONATE
CALCITRIOL
CALCIUM CARBONATE
CATAPRES
CERUBIDINE
CHLORAL HY
CHLORPHENI
CHLORPROMA
CILOSTAZOL
CIMETIDINE
CIPROFLOXA
CISPLATIN
CITALOPRAM
CLADRIBINE
CLARITHROM
CLINDAMYCI
CLOTRIMAZO
COCAINE HC
CODEINE 15
CODEINE PH
CODEINE SU
COMBIPRES
COMBIVENT

EXHIBIT A

CROMOLN
CROMOLYN
CYCLOPHOSP
CYCLOSPORI
CYTARABINE
DEXAMETHASONE
DIHYDROTACHSTEROL
DIAZEPAM
DICLOFENAC
DIFLUNISAL
DIGOXIN
DIHYDROERGOTAMINE
DIPHENHYDR
DIPHENOXYL
DOCUSATE
DOLOPHINE
DOXORUBICI
DOXYCYCLIN
DULCOLAX
DURACLON
ENALAPRILA
FAMOTIDINE
FELCAINIDE
FERROUS SU
FLECAINIDE
FLOMAX
FLUCONAZOL
FLUPHENAZI
FLUTICASON
FOLIC ACID
FUROSEMIDE
GLUCAGEN
GUAIFENESI
HALOPERIDO
HYDROCHLOR
HYDROMORPH
HYDROXYURE
IMIPRAMINE
INDOMETHAC
IODINATED
IPRATROPIU
ISOETHARIN
KAOLIN-PEC
KETAMINE H
KETOROLAC
LABETALOL
LACTULOSE
LACTULOSE
LEUCOVORIN
LEVOCARNIT
LEVORPHANO
LEVOTHYROX

EXHIBIT A

LITHIUM CARBONATE	
LITHIUM CITRATE	
LOPERAMIDE	
LORAZEPAM	
MARINOL	
MEFLOQUINE	
MEGESTROL	
MELOXICAM	
MEPERID 50	
MEPERIDINE	
MERCAPTOPU	
MESNA INJE	
METAPROTER	
METHADONE	
METHOTREX	
METHYLDOPA	
METHYLPRED	
METOCLOP	
METOCLOPRA	
METOPROLOL	
MEXILETINE	
MEXITIL	
MICARDIS	
MIDAZOLAM	
MILK OF MA	
MIRAPEX	
MIRTAZAPIN	
MITOMYCIN	
MOBIC	
MORPHINE SULFATE	
MORPHINE	
NAPROX SUSPEN	
NAPROXEN	
NEFAZODONE	
NEOMYCIN	
OCTREOTIDE	
ONDANSETRO	
ORAMORPH	
OXCARBAZEP	
OXYCODONE	
PACLITAXEL	
PAMIDRONAT	
PAPAVERINE	
PERSANTINE	
PHENOBARBI	
PHENTOLAMI	
PILOCARPIN	
PIROXICAM	
POLYMYXIN	
POTASSIUM CHLORIDE	
PREDNISONE	
PROCHLORPE	

EXHIBIT A

PROPANTHEL
PROPOXYPHE
PROPRAN
PROPRANOLO
PSEUDO TAB
PSEUDOEPHE
QUINIDINE
RANITIDINE
RESPBID
RIFAMPIN
ROPINIROLE
ROXAN
ROXANOL
ROXICET
ROXICODONE
ROXILOX
ROXIPRIN
SALIVA SUB
SERENTIL
SERTRALINE
SODIUM POLY SULFONATE
SODIUM CHLORIDE
SODIUM POLYSTYRENE SULFONATE
SPIRIVA
STERILE AC
SULFAMETHOXAZOLE
TAMOXIFEN
THEOPHYLLI
THIORIDAZI
THIOTHIXEN
TORECAN
TORSEMIDE
TRIAZOLAM
VINBLASTIN
VIRAMUNE
ZALEPLON
ZIDOVUDINE
ZOLPIDEM T
CSL BEHRING DEFENDANTS
ACTHAR H P
ALBUMINAR
AQUASOL A
ARM-A-VIAL
BIOCLATE
CARIMUNE
DIALUME
GAMMAR
HELIXATE
HUMATE-P
M V I PED
MONOCLATE
MONONINE

EXHIBIT A

RHOPHYLAC
STIMATE
VIVAGLOBIN
ZEMAIRA
FOREST DEFENDANTS
AEROBID
AEROCHAMBE
AMBENYL
APAP/HYDRO
ARMOUR THY
BANCAP
BENZONATAT
BETACHRON
BUCET
BUTALBITAL
BYSTOLIC
CAMPRAL
CARBAMAZEP
CEBOCAP
CELEXA
CITALOPRAM
COMBUNOX
DILTIAZEM
ELIXOPHYLL
ENDAL
ESGIC
FEOSTAT
FLUMADINE
HYDROCODON
INDOCHRON
INDOMETHAC
ISOSORBIDE
KAY CIEL
LEVOTHROID
LEXAPRO
LORCET
MONUROL
NAMENDA
NITROGARD
PARAL
PEDAMETH
PROPRANOLO
PYOCIDIN
RIMANTADIN
SUS-PHRINE
TESSALON P
THEOCHRON
THEOPHYLLI
THYROLAR
TIAZAC
TRIAD
UAD OTIC EAR SU

EXHIBIT A

VERTAB
ZONE-A
MALLINCKRODT DEFENDANTS
ACETAMINOPHEN
AMPHETAMINE
ANAFRANIL
ANAGRELIDE
ANEXSIA
ATENOLOL
AZATHIOPRI
BENZONATAT
BUTALBITAL
COCAINE HYDROCHLORIDE
CODEINE PH
DEXTROAMPH
DIPHENOXYL
FLUOXETINE
HYDOCODONE
HYDROMORPH
IMIPRAMINE
MAGNACET
MELOXICAM
MEPERIDINE
METFORMIN
METHADONE
METHADOSE
METHYLIN E
METHYLPHEN
MORPHINE
M-OXY
NALTREXONE
OXYCODONE
PAMELOR 50
PEMADD
PEMOLINE
PENTAZOCIN
PROMETHAZI
PROPADE
PROPOXYPHE
RESTORIL
RIBAVIRIN
SIMVASTATI
TEMAZEPAM
TOFRANIL
TRAMADOL
TUSSIZONE
WARFARIN
MORTON GROVE DEFENDANTS
ACETAMINOPHEN
ACETIC ACID
ACIDULATED
AMANTADINE

EXHIBIT A

BROMAXEFED
BROMODIPHE
CARBAMAZEP
CARBAXEFED
CARBINOXAM
CHLORAL HYRATE
CIMEDTIDIN
CIMETIDINE
CLEMASTINE
CLINDAMYCI
CLOBETASOL
C-PHED
CYCLOSPORI
DEC-CHLORPHEN
DECOHISTIN
DEXAMETHAS
DIPHEN
DOCUSATE S
DOXEPIN HC
ERYTHROMYCIN
FERROUS SULF
FLUOXETINE
FUROSEMIDE
GENERLAC
GUAIFENESI
HYDROCODONE
HYDROXYZINE
HYOSCYAMINE
LACTULOSE
LIDOCAINE
LINDANE
LITHIUM CARBONATE
MEGESTROL
METAPROTERENOL
METOCLOPRAMIDE
MORPHINE
MULTI-VITAM
MYPHETANE
MYTUSSIN
NYSTATIN
OXYBUTYNIN
PAREGORIC
PHENCLOR
PHENOBARBI
PHENYTOIN
POTASSIUM
PREDNISOLONE
PROMETHAZINE
PYRILAFEN
SELENIUM S
TANNIHIST
TETRA TANN

EXHIBIT A

THEOPHYLLINE
TRIAMCINOL
TRIPLE TAN
TRIPLE VITA
TRIPROLIDINE
VALPROIC A
MUTUAL PHARMACEUTICAL DEFENDANTS
ACETAMINOPHEN
ACETAZOLAM
ALBUTEROL
ALLOPURINOL
AMANTADINE
AMITRIPTYL
AMPHETAMIN
ASPIRIN
ATENOLOL
BENZTROPIN
BETHANECHO
BISOPROLOL
CARBAMAZEP
CARISOPRODOL
CHLORDIAZE
CHLORTHALID
CHLORZOXAZONE
CLONIDINE
CYCLOBENZAPRINE
DIPHENHYDRAMINE
DOXEPIN
DOXYCYCLIN
ERGOLOID
FELODIPINE
FLUOXETINE
FOLIC ACID
GABAPENTIN
GUAIFENESIN
HYDRALAZINE
HYDROCODONE
HYDROXYZINE
HYOSCYAMINE
IBUPROFEN
IMIPRAMINE
INDOMETHAC
KETOCONAZOLE
LABETALOL
LORAZEPAM
LOVASTATIN
MECLIZINE
MELOXICAM
METFORMIN
METOPROLOL
METRONIDAZOLE
MINOXIDIL

EXHIBIT A

MULTIHIST
NYSTATIN
ORDRINE
PANCRELIPASE
PIROXICAM
PREDNISONE
PRIMIDONE
PROPAFENON
PROPOXYPHENE
QUINIDINE
SALSALATE
SPIRONOLAC
SULFASALAZ
SULFISOXAZ
SULINDAC
THEOPHYLLINE
THIORIDAZINE
TOLAZAMIDE
TOLMETIN
TRAMADOL
TRAZODONE
TRIMETHOBENZAMIDE
VERAPAMIL
ZOLPIDEM
ZONISAMIDE
NOVARTIS DEFENDANTS
ACTIGALL
ANAFRANIL
ANTURANE
APRESOLINE
AREDIA
ASBRON G
ASCRIPTIN
ATROPISOL
AZMACORT
BELLERGAL
BETIMOL
BRETHAIRE
BRETHANCER
BRETHINE
BUTAZOLIDI
CAFERGOT
CATAFLAM
CERUBIDINE
CIBACALCIN
CIBALITH-S
CLEMASTINE
CLOZARIL
COMBIPATCH
COMTAN
CONSTANT-T
CYTADREN

EXHIBIT A

CYTARABINE
D.H.E 45
DENAVIR
DESENEX AF
DESFERAL
DEXACIDIN
DIAPID NAS
DIOVAN
DOXORUBICI
DULCOLAX
DYNACIRC
EFIDAC
EFLONE
ELIDEL
ENABLEX
ESERINE SU
ESIDRIX
ESIMIL
ESTRADERM
EXELON
EXFORGE FC
EXJADE
EX-LAX MIL
FAMVIR
FEMARA
FIORICET
FIORINAL
FIORTAL
FLUOR-OP
FOCALIN
FORADIL AE
GENTACIDIN
GENTEAL
GLEEVEC
GLUCOSE
HABITROL
HOMATROPIN
HYDERGINE
HYPOTEARS
INFLAMASE
ISMELIN
KLORVESS
LAMISIL
LAMPRENE
LESCOL
LIORESAL
LITHOBID
LIVOSTIN
LOPRESSOR
LOTENSIN
LOTREL
LUDIOMIL

EXHIBIT A

MAALOX
MELLARIL
MESANTOIN
METAPREL
METHERGINE
METOPIRONE
METOPROLOL
MIACALCIN
MIGRANAL
MYFORTIC
NEO-CALGLU
NEORAL SOL
NICOTINE
NUPERCAINA
OCUPRESS
OSCO NTS 1
PAMELOR
PAREPECTOL
PARLODEL
PERDIEM FIBER
PILOCAR
PROLEUKIN
RECLAST
REGITINE
RESCULA
RESTORIL
RIMACTANE
RITALIN
SANDIMMUNE
SANDOGLOBULIN
SANDOSTATIN
SANSERT
SER-AP-ES
SERPASIL
SLO-BID 10
SLO-PHYLLI
SLOW FE
SLOW-K
STALEVO
STARLIX 60
SULF-10
SYNTOCINON
TASIGNA HG
TAVIST
TEARISOL
TEGRETOL
TEKTURNA H
TEN-K
TETRACAINE
TEXTURNA
THIORIDAZINE
TOBI

EXHIBIT A

TOFRANIL
TOMYCINE
TRANSDERM
TRIAMINIC
TRIAMTEREN
TRILEPTAL
VASOCIDIN
VASOCINE
VASOCON
VASOSULF
VISKEN
VISUDYNE
VIVELLE
VOLTAREN
ZADITOR
ZELNORM
ZOMETA
PFIZER DEFENDANTS
ACCUPRIL
ACCURETIC
ACETAMINOPHEN
ACTH
ACTIVELLA
ADRENALIN
ADRIAMYCIN
ADRUCIL
ALDACTAZID
ALDACTONE
ALPRAZOLAM
AMBIEN
AMINOPHYLL
AMITRIPTYL
AMLODIPINE
AMOXICILLINE
AMPHOCIN
AMPICILLINE
ANSAID
ANTIMINTH
ANTIVERT
ANUSOL
APLISOL
APLITEST
AROMASIN
ARTHROTEC
ASPIRIN
ATARAX
AXERT
AXOTAL
AZITHROMYC
AZULFIDINE
BACITRACIN
BANTHINE

EXHIBIT A

BENADRYL
BENYLIN
BEXTRA
BLEOMYCIN
BREVICON
BRONDECON
CABERGOLIN
CADUET
CALAN
CAMPTOSAR
CARDURA
CAVERJECT
CEFOBID PI
CELEBREX
CELONTIN
CENTRAX
CEREBYX
CHANTIX
CHERACOL
CHILDREN'S
CHLOROMYCE
CHLORPROMA
CHOLEDYL
CHOLYBAR
CLEOCIN
CLEOCIN
CLINDAMYCI
CLONIDINE
COGNEX
COLESTID
COLESTIPOL
COLY-MYCIN
CORTAID
CORTEF
CORTISONE
COVERA
CYCLOBENZA
CYTOSAR
CYTOTEC
DAYPRO
DELTASONE
DEMULEN
DEPO PROVE
DEPO-ESTRA
DEPO-MEDRO
DEPO-PROVE
DEPO-SUBQ
DEPO-TESTA
DETROL
DIABINESE
DIAZEPAM
DIDREX

EXHIBIT A

DIFLUCAN
DILANTIN
DIPENTUM
DIPHENOXYL
DIULO
DORYX
DOSTINEX
DOXIDAN
DOXYCYCLIN
DRAMAMINE
EASPRIN
ELASE
EMCYT
EMETE-CON
EMETROL
E-MYCIN
EPLERENONE
ERAXIS
ERGOSTAT
ERYC
ERYTHROMYC
ESTRING
ESTROSTEP
ESTROVIS
EUTHROID
EXUBERA
FELDENE
FEMHRT
FEMINONE
FEMPATCH
FERROUS SU
FLAGYL
FLAVORED C
FLUCONAZOL
FLUOGEN
FLURBIPROF
FRAGMIN
FUROSEMIDE
GABAPENTIN
GELUSIL
GENOTROPIN
GEOCILLIN
GEODON
GLIPIZIDE
GLUCOTROL
GLYBURIDE
GLYNASE
GLYSET 50M
HALCION
HALOPERIDO
HALOTESTIN
HEPARIN SO

EXHIBIT A

HUMATIN
HYDROCHLOR
IBUPROFEN
INDOMETHAC
INSPRA
KAO LECTRO
KAOCHLOR
KAON
KAOPECTATE
KERLONE
KETALAR
K-LEASE
LACTULOSE
LEOSTRIN 2
LEOSTRIN F
LEVORA-28
LEVSIN DRO
LINCOCIN
LIPITOR
LOESTRIN
LOMOTIL
LONITEN
LOPID
LUNELLE
LYRICA
MANDELAMIN
MAOLATE
MAXAQUIN
MECLOMEN
MEDROL
MEDROXYPRO
METAMUCIL
METHYLDOPA
METHYLPRED
MICRONASE
MICRONIZED
MILONTIN
MINIPRESS
MINIZIDE 1
MIRAPEX
MISOPROSTO
MODANE
MOTRIN
MYCOBUTIN
NARDIL
NATABEC RX
NAVANE
NEO-CORTEF
NEOSAR
NEURONTIN
NICOTROL
NITRODISC

EXHIBIT A

NITROL
NITROSTAT
NORETHIN
NORINYL
NORLESTRIN
NORLUTATE
NORPACE
NOR-Q-D
NORVASC
OGEN
OMNICEF
OPHTHOCORT
ORINASE
OXAPROZIN
PANMYCIN
PARSIDOL
PEDIACARE
PENICILLIN
PERMAPEN
PFIZERPEN
PHENOBARBI
PIROXICAM
PITOCIN
PITRESSIN
POLYMYXIN
PONSTEL
PRO-BANTHI
PROCAN SR
PROCAINAMIDE
PROCARDIA
PROLOID
PROSTIN
PROVERA
PYRIDIUM
QUINAPRIL
QUINIDINE
QUININE SU
RELPAX
RENESE
RESCRIPTOR
REVATIO
REZULIN
R-GENE 10
SERTRALINE
SINEQUAN
SINUBID
SLOW-MAG
SODIUM CHL
SOLU-CORTE
SOLU-MEDRO
SPIRONOLAC
STREPTOMYC

EXHIBIT A

SULFASALAZ
SULFASALZI
SURFAK
SUSTAIRE
SUTENT
SYNAREL
SYTOBEX
TABRON
TAO
TEDRAL
TERRA-CORT
TERRAMYCIN
TETRACYCLI
THEELIN
THEO
TIKOSYN CA
TOLINASE
TRIAZOLAM
TRI-NORINY
TRIVORA
TROVAN
TYMPAGESIC
UNASYN
UTICORT
VAGIFEM
VANTIN
VERAPAMIL
VFEND
VIAGRA
VIBRAMYCIN
VIBRA-TABS
VINCASAR
VIRA-A
VIRACEPT
VISTARIL
XALATAN SS
XANAX
ZARONTIN
ZINECARD
ZINECARDS
ZITHROMAX
ZMAX
ZOLOFT
ZYRTEC
ZYVOX
QUALITEST DEFENDANTS
A/B OTIC
ACETAMINOPHEN
ACETAZOLAM
ACETIC ACID
ACIDIC VAG
ALBUTEROL

EXHIBIT A

ALLOPURINO
AMANTADINE
AMILORIDE
AMITRIPTYL
AMOXAPINE
AMOXICILLI
AMPICILLIN
ANTACID
ANTIBIOTIC
APAP
ASPIRIN-LO
ATENOLOL
ATROPINE S
BACLOFEN
BENZONATAT
BENZOYL PE
BENZTROPIN
BETAMETHAS
BETHANECHO
BISACODYL
BROMANYL
BROMATAPP
BROMOPHED
BROMPHENIR
BROMUPHED
BUFFERED A
BUTALBITAL
CALCIUM AN
CARBAMAZEP
CARBIDOPA/
CARDEC
CARISOPROD
CEFACLOR
CEPHALEXIN
CEPHRADINE
CERVICAL A
CHERATUSSI
CHLORAL HY
CHLORAMPHE
CHLORDIAZE
CHLOROTHIA
CHLORPHENI
CHLORPROMA
CHLORPROPA
CIMETIDINE
CLEMASTINE
CLINDAMYCI
CLONAZEPAM
CLONIDINE
CLORAZEPAT
CLOTRIMAZO
CLOXACILLI

EXHIBIT A

CODAMINE
CODITUSS D
COLCHICINE
CORTISONE
CYCLOBENZA
CYPROHEPTA
DECONESTIN
DECONGEST
DESIPRAMIN
DESOXIMETA
DETUSSIN
DEXAIR
DEXAMETHAS
DEXCHLORPH
DIAZEPAM
DICLOXACIL
DICYCLOMIN
DIGOXIN
DILTIAZEM
DIMENHYDRI
DIPHENHYDR
DIPHENOXYL
DIPYRIDAMO
DISOPYRAMI
DISULFIRAM
DOC-Q-LACE
DOXEPIN HC
DOXYCYCLIN
DREXOPHED
DRITUSS DM
DRITUSS
EAR-GESIC
ENTERIC CO
ERGOLOID M
ERYTHROMYC
ESTROPIPAT
FENOPROFEN
FERROUS SU
FLOURIDE C
FLUOCINOLO
FLUOCINONI
FLUORIDE D
FLUPHENAZI
FLURAZEPAM
FLURBIPROF
FOAMING ANTACID
FOLIC ACID
FUROSEMIDE
GENTAFAIR
GENTAMICIN
GLIPIZIDE
GLYBURIDE

EXHIBIT A

GRANUL-DER
GUAIFEN PS
GUAIFENESI
GUAIFEN-PS
GUAIVENT
GUANFACINE
HALOPERIDO
HC TUSSIVE
HDROCODONE
HEMORRHOIDAL
HYDORCODONE
HYDRALAZINE
HYDROCHLOR
HYDROCODONE
HYDROCORTISONE
HYDROMORPH
HYDROXYZIN
HYOSCYAMIN
IBUPROFEN
IMIPRAMINE
INDOMETHAC
INSULIN SY
IOPHEN
ISOSORBIDE
K EFFERVES
K+ POTASSIUM
K-EFFERVES
KETOPROFEN
LACTULOSE
LEUCOVORIN
LEVOTHYROX
LIDOCAINE
LINDANE
LITHIUM CA
LOPERAMIDE
LORAZEPAM
LOXAPINE S
MAPROTILIN
MATERNITY
MECLIZINE
MECLOFENAM
MEDROXYPRO
MEGESTROL
MEPERIDINE
MEPERITAB
MEPROBAMAT
METAPROTER
METHAZOLAM
METHOCARBA
METHOTREXA
METHYLDOPA
METHYLPHENIDATE

EXHIBIT A

METHYLPRED
METOCLOPRA
METRONIDAZ
MINOCYCLIN
MINOXIDIL
MULTI VIT
MULTI-BRET
MYLACARE
NAPHAZOLIN
NAPROXEN
NATURAL VE
NEO-DEX
NEOPTIC
NIACIN TD
NIFEDIPINE
NITROFURAN
NITROGLYCE
NOLPHENAMI
NYSTATIN
OCTICAINE
OCUTRICIN
ORGAN-I
OR-PHEN-AD
OR-PRIN
OTICAINE
OTIGESIC O
OXAZEPAM
OXYBUTYNIN
OXYCODONE
PANASE
PAPAVERINE
PAREGORIC
PEMOLINE
PENICILLIN
PERPHENAZINE
PHENAZOPYRIDINE
PHENOBARBI
PHENTERMINE
PHENYLHISTINE
PILOCARPIN
PINDOLOL
PINK BISMUTH
PIROXICAM
POLY CS
POLY-D
POLY-DM
POTASSIUM
PRAZOSIN H
PREDNISOLONE
PREDNISONE
PRENATAL
PRIMIDONE

EXHIBIT A

PROBENECID
PROCAINAMIDE
PROCTOSERT
PROMETHAZINE
PROPAFENON
PROPOXYPHENE
PROPRANOLO
PSEUDOEPHE
Q NOL 325
Q-BID
Q-DRYL
Q-FED
Q-MIBID
Q-NOL
Q-PAP
Q-PROFEN
Q-TUSSIN
QUINDAL
QUINIDINE
QUININE
QUINTEX
R-TANNAMIN
SALSALATE
SELENIUM S
SENNA LAX
SILVER SUL
SODIUM FLUORIDE
SODIUM SULF
SORBITOL
SOTALOL
SPIRONOLAC
SUCRALFATE
SULFACETAM
SULFAMETHO
SULFASALAZ
SULFATRIM
SULFAZINE
SULFISOXAZ
SULINDAC
SULPRED
SUR-Q LAX
TEMAZEPAM
TETRACYCLI
THEOPHYLLINE
THERMAZENE
THEROBEC
THIORIDAZINE
THIOTHIXEN
THYROID
TOBRAMYCIN
TOLBUTAMID
TOLMETIN S

EXHIBIT A

TRAZODONE
TRIACTIN
TRIAMCINOL
TRIAMTEREN
TRIAZOLAM
TRICOSAL
TRIHEXYPHE
TRIMETHOPRIM
TRIPLE ANTIBIOTIC OINTMENT
TRIPLE SUL
TRI-VITAMIN
TRIXAICIN
URINARY ANTISEPTIC
URSODIOL
VALPROIC A
VEGETABLE LAX
VERAPAMIL
VICA-FORTE
VI-Q TUSS
YOHIMBINE
Z+PRENATAL
ZOCORT HC
ZOLENE HC
ZOTANE HC
SCHERING DEFENDANTS
ADALAT
AEROBID
AFRIN
ALBUTEROL
AMOXICILLIN
ASMANEX
AUGMENTED BETAMETHASONE
AVELOX IV
AVELOX TAB
BETAMETHAS
BILTRICIDE
CEDAX
CELESTONE
CHLOR-TRIM
CIMETIDINE
CIPRO
CLARINEX
CLARITIN
CLOTRIMAZO
DERMOLATE
DIPROLENE
DIPROSONE
DRIXORAL
ELOCON
EMKO
ESTINYL
ETRAFON

EXHIBIT A

EULEXIN
FEMCARE
FORADIL
FULVICIN P
GARAMYCIN
GLYBURIDE
GRISEOFULV
GYNE-LOTRI
IMDUR
INSPIREASE
INSPIREASE
INTRON
ISOSORBIDE
K-DUR
LABETALOL
LEVITRA
LOTRIMIN
LOTRISONE
METICORTEN
METIMYD
MEXILETINE
MIRADON
MOL-IRON
MOMETASONE
NAQUA
NASONEX
NASONEX NA
NITRO-DUR
NONOXYNOL
NORMODYNE
NORMOZIDE
NOXAFIL PO
OPTIMINE
ORETON MET
OTOBIOTIC
OXAPROZIN
PAXIPAM
PEG-INTRON
PERMITIL
PERPHENAZI
POLARAMINE
POTASSIUM
PROVENTIL
REBETOL
REBETRON 1
RELA
RIBAVIRIN
SEBIZON
SODIUM SUL
SOLGANAL
SUCRALFATE
TEMODAR

EXHIBIT A

THEO-DUR
THEOPHYLLI
TINACTIN
TRILAFON
TRINALIN
UNI-DUR
VALISONE
VANCENASE
VANCERIL
SCHWARTZ DEFENDANTS
CALCIFEROL
CODICLEAR
CODIMAL
CO-GESIC
COLYTE
CORTIFOAM
DEPONIT
DILATRATE
EDEX
EPIFOAM
FEDAHIST
GLYCOLAX
GUAIMAX-D
HYDROCODONE
HYOSCYAMINE
ISOSORBIDE
KUTAPRESSI
KUTRASE
KU-ZYME
LACTRASE
LEVATOL
LEVBID
LEVSIN
LEVSINEX
MILKINOL
MOEXIPRIL
MONOKET
NASCOBAL
NEUPRO
NIFEDIPINE
NIFEREX
NIRAVAM TA
NITROCINE
NULEV
OMEPRAZOLE
PARCOPA
PEDIAPAP
PEG 3350
PROCTOCREA
PROCTOFOAM
PSEUDOEPHEDRIN
REGLAN

EXHIBIT A

ROBAXIN
THEOCLEAR
TRILYTE
UNIRETIC
UNIVASC
URSO
VERAPAMIL
VERELAN
TARO DEFENDANTS
ACETAZOLAMIDE
ACETIC ACID
ALCLOMETASONE
AMCINONIDE
AMIODARONE
AMMONIUM
ANTIPYRINE
BETAMETHASONE
CARBA SUSP
CARBAMAZEP
CICLOPIROX
CIPROFLOXACIN
CLINDAMYCIN
CLOBETASOL
CLOMIPRAMINE
CLOREZAPATE
CLOTRIM
CLOTRIMAZOLE
DESONIDE
DESOXIMETASONE
DIFLORASON
ECONAZOLE
ELIXSURE
ENALAPRIL
ETODOLAC
ETOLODAC
FLUCONAZOLE
FLUOCINOLONE
FLUOCINONIDE
FLUOROURAC
FLUTICASON
GENTAMICIN
HALOBETASOL
HYDROCORTISONE
KETOCONAZOLE
LIDOCAINE
LORATADINE
MICONAZOLE
MOMETASONE
MUPIROCIN
NYSTATIN
ORALONE
OVIDE

EXHIBIT A

PHENYTOIN
RX EAR DRO
RX-OTIC
TERCONAZOLE
TOPICORT
TRIAMCINOL
TRIPLE ANTIBIOTIC
UCORT
WARFARIN
UPSHER-SMITH DEFENDANTS
ACETAMINOPHEN
ALTINAC
ASPIRIN
BISACODYL
CLENIA
DIVALPROEX
DIVIGEL
DOCUSATE
FERATAB
FERROUS SULF
FEVERALL
FOLGARD
FOLIC ACID
FORTICAL
GEMCOR
KLOR-CON
MIDODRINE
OMS
PACERONE
PENTOXIL
POTASSIUM
PREVALITE
RMS-SUPPOS
SALSITAB
SORBITOL
SSKI
VANDAZOLE
ZINC SULFATE
WYETH DEFENDANTS
A.P.L.
ACEBUTOLOL
ACEL-IMUNE
ACETAMINOPHEN
ACHROMYCIN
ACYCLOVIR
ADVIL
ALAVERT
ALBUTEROL
ALESSE
ALLOPURINO
ALPRAZOLAM
ALUDROX

EXHIBIT A

AMICAR
AMIKACIN S
AMILORIDE
AMINOPHYLL
AMITRIPTYL
AMOXICILLIN
AMPHOJEL
AMPICILLIN
ANACIN
ANA-GUARD
ANA-KIT
ANTABUSE
ANTIVENIN
ARISTOCORT
ARTANE
ARTHRITIS
ASENDIN
ATENOLOL
ATIVAN
ATROMID
ATROPINE
AURALGAN
AXID
AYGESTIN
BASALJEL
BENEFIX
BENZTROPIN
BICILLIN
BISOPROLOL
BUTORPHANO
CALTRATE-6
CAPTOPRIL
CARAFATE
CARBAMAZEP
CARDIZEM
CEFACLOR
CEFAZOLIN
CENTRUM JR
CEPHALEXIN
CEPHRADINE
CERUBIDINE
CHILDREN'S ADVIL
CHLORDIAZEPOXIDE
CHLORPHENIR
CHLORPROMAZ
CHLORPROPAM
CHLORTHALID
CIMETIDINE
CLINDAMYCIN
CLONIDINE
CLORAZEPATE
CLOXACILLIN

EXHIBIT A

CODEINE PH	
CORDARONE	
COUMADIN	
CVC HEPARI	
CYANOCOBAL	
CYCLOCORT	
CYCLOPHOSPH	
CYCRIN	
DECLOMYCIN	
DEPONIT	
DEXAMETHAS	
DEXTROSE	
DIAMOX	
DIAZEPAM	
DICLOXACIL	
DICYCLOMIN	
DIGOXIN	
DILTIAZEM	
DIMETANE	
DIMETAPP	
DIPHENHYDR	
DIPHENOXYL	
DIPHTHERIA	
DIPYRIDAMOLE	
DOCUSATE	
DOLENE	
DONNAGEL-P	
DONNAZYME	
DOXEPIN HC	
DOXYCYCLIN	
DTP C & A	
DTP DM C&C	
DURACT	
DURAMORPH	
EFFEXOR	
ENTOZYME	
EPINEPHRIN	
EQUAGESIC	
EQUANIL	
ERYTHROMYC	
ESTRADIOL	
ESTROGENIC	
ETODOLAC	
FACTREL	
FAMOTIDINE	
FENOPROFEN	
FENTANYL	
FERRO-SEQU	
FERROUS	
FIBERCON	
FILIBON	
FLUIMMUNE	

EXHIBIT A

FLURAZEPAM
FOLVITE
FUROSEMIDE
GEMFIBROZI
GENTAMICIN
GRISACTIN
GRISEOFULVIN
GUAIFENESIN
GUANFACINE
HALOPERIDO
HCTZ/RESER
HEPARIN
HEP-LOCK
HIB-IMUNE
HYDRALAZIN
HYDROCHLOR
HYDROCODONE
HYDROCORTIZONE
HYDROMORPH
HYDROXYZIN
IBUPROFEN
IMIPRAMINE
INDERAL
INDERIDE
INDOMETHAC
INFLUENZA
INFUMORPH
ISMO
ISORDIL
ISOSORBIDE
KERODEX
KETOPROFEN
LEDERCILLIN
LEUCOVORIN
LEVO-T
LEVOTHYROX
LIDOCAINE
LO/OVRAL
LODINE
LORAZEPAM
LOXITANE
LYBREL
MATERNA
MAXZIDE
MECLIZINE
MECLOFENAMATE
MEDROXYPRO
MEPERGAN
MEPERIDINE
METHAZOLAMIDE
METHENAMIN
METHOCARBA

EXHIBIT A

METHOTREXA	
METHYCLOTH	
METHYLDOPA	
METOCLOPRA	
METRONIDAZ	
MICRO-K	
MIDAZOLAM	
MINOCIN	
MINOCYCLIN	
MITROLAN	
MORPHINE	
MYAMBUTOL	
MYSOLINE	
NAPRELAN	
NAPROXEN	
NENMEGA	
NEPTAZANE	
NEUMEGA	
NILSTAT	
NITROGLYCE	
NORDETTE-2	
NORPLANT	
NOVANTRONE	
OCUCOAT	
OMNIPEN	
OPIUM	
ORIMUNE DI	
ORUDIS	
ORUVAIL	
OVRAL-21	
OVRETTE	
OXAZEPAM	
PANTOPRAZO	
PAPAVERINE	
PATHOCIL	
PENTOBARBI	
PENTOXIFYL	
PEN-VEE K	
PHENAPHEN	
PHENERGAN	
PHENOBARBI	
PHENYTOIN	
PHOSPH. IO	
PHOSPHOLIN	
PIPRACIL	
PIROXICAM	
PNU-IMUNE	
PONDIMIN	
POSTURE	
POTASSIUM	
PRAZOSIN H	
PREDNISONE	

EXHIBIT A

PREMARIN
PREMPHASE
PREMPRO
PRENATAL PLUS
PRIMATENE
PRISTIQ EX
PROBENECID
PROCHLORPER
PROMETHAZINE
PROPOXYPHENE
PROPRANOLOL
PROPYLTHIOURACIL
PROSTEP
PROTONIX
PYRAZINAMIDE
QUINIDEX
QUINIDINE
RAPAMUNE
REGLAN
RHEUMATREX
RIOPAN
ROBAXIN
ROBAXISAL
ROBICILLIN
ROBIMYCIN
ROBINUL
ROBITET
ROBITUSSIN
SECTRAL
SELEGILINE
SEMICID
SERAX
SODIUM CHL
SONATA
SPARINE
SPIRONOLAC
STORZ-DEXA
STUART PRE
STUARTNATA
SULFAMETHO
SULFASALAZINE
SULINDAC
SUPRAX
SURMONTIL
SYNALGOS
TEMAZEPAM
TENEX
TETANUS DI
THEOPHYLLINE
THIAMINE H
THIORIDAZINE
THYROID

EXHIBIT A

TOBRAMYCIN	
TODAY SPONGE	
TOLAZAMIDE	
TOLBUTAMIDE	
TRAZODONE	
TRI-IMMUNO	
TRIPHASIL	
TUBERCULIN	
TUBEX INJ	
TYGACIL IN	
UNIPEN	
VANCOLED	
VANCOMYCIN	
VERAPAMIL	
VIOKASE	
WYAMYCIN	
WYCILLIN	
WYDASE	
WYGESIC	
WYMOX	
WYTENSIN	
Z-BEC	
ZEBETA	
ZIAC	
ZOSYN	

ADDENDUM C

Note 60

932 P 2d 622 309 Utah Adv Rep 5 Criminal Law ⇐ 1136

Plaintiffs failure to object to irrigation company's assertion of Limitation of Landowner Liability Act as defense in motion for judgment on pleadings on grounds that company failed to raise defense in answer waived company's defective mode of placing Act in issue U C A 1953 57-14-6 Rules Civ Proc Rules 8(b c e) 12(b) (b)(6) (h) Golding v Ashley Cent Irr Co 1990 793 P 2d 897 Appeal And Error ⇐ 196

Defendant in negligence action waived issue of mitigation of damages by failing to raise the issue as an affirmative defense in his answer to complaint or present evidence or argument on mitigation at trial Rules Civ Proc Rules 8(c) 12(h) 15(b) Gill v Timm 1986 720 P 2d 1352 Appeal And Error ⇐ 173(2)

Defense of election of remedies is an affirmative one and must be raised by way of answer motion or demand so as to put issue before trial court and is not to be raised for first time on appeal; the defense may be waived or a litigant may be estopped to assert such defense Rules of Civil Procedure rules 8(b c) 12(a-c) Royal Resources Inc v Gibraltar Financial Corp 1979 603 P 2d 793 Appeal And Error ⇐ 173(2) Election Of Remedies ⇐ 1 Election Of Remedies ⇐ 16

In considering motion to dismiss complaint both district court and Supreme Court on review are to survey its allegations in light most favorable to plaintiff and grant dismissal only if plaintiff could not in any event establish a right to recover Barrus v Willinson 1965 16 Utah 2d 204 398 P 2d 207 Appeal And Error ⇐ 919 Pleading ⇐ 34(3) Pleading ⇐ 354 Pre trial Procedure ⇐ 622

A point may not be raised for the first time on appeal Rules of Civil Procedure rules 8(c), 12(h) Tygesen v Magna Water Co 1962 13 Utah 2d 397 375 P 2d 456 Appeal And Error ⇐ 169

RULE 9. PLEADING SPECIAL MATTERS

(a)(1) **Capacity.** It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party A party may raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity by specific negative averment, which shall include facts within the pleader's knowledge If raised as an issue, the party relying on such capacity, authority, or legal existence, shall establish the same on the trial

(a)(2) *Designation of unknown defendant* When a party does not know the name of an adverse party, he may state that fact in the pleadings and thereupon such adverse party may be designated in any pleading or proceeding by any name, provided, that when the true name of such adverse party is ascertained, the pleading or proceeding must be amended accordingly

(a)(3) *Actions to quiet title, description of interest of unknown parties* In an action to quiet title wherein any of the parties are designated in the caption as 'unknown' the pleadings may describe such unknown persons as 'all other persons unknown claiming any right, title, estate or interest in, or lien upon the real property described in the pleading adverse to the complainant's ownership, or clouding his title thereto

(b) **Fraud, mistake, condition of the mind** In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity Malice, intent, knowledge and other condition of mind of a person may be averred generally

(c) **Conditions precedent.** In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred A denial of performance or

occurrence shall be made specifically and with particularity, and when so made the party pleading the performance or occurrence shall on the trial establish the facts showing such performance or occurrence

(d) **Official document or act.** In pleading an official document or act it is sufficient to aver that the document was issued or the act done in compliance with law

(e) **Judgment.** In pleading a judgment or decision of a domestic or foreign court, judicial or quasi judicial tribunal or of a board or officer it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it. A denial of jurisdiction shall be made specifically and with particularity and when so made the party pleading the judgment or decision shall establish on the trial all controverted jurisdictional facts

(f) **Time and place.** For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter

(g) **Special damage.** When items of special damage are claimed, they shall be specifically stated

(h) **Statute of limitations.** In pleading the statute of limitations it is not necessary to state the facts showing the defense but it may be alleged generally that the cause of action is barred by the provisions of the statute relied on referring to or describing such statute specifically and definitely by section number, subsection designation, if any, or otherwise designating the provision relied upon sufficiently clearly to identify it. If such allegation is controverted, the party pleading the statute must establish, on the trial, the facts showing that the cause of action is so barred

(i) **Private statutes; ordinances.** In pleading a private statute of this state, or an ordinance of any political subdivision thereof, or a right derived from such statute or ordinance, it is sufficient to refer to such statute or ordinance by its title and the day of its passage or by its section number or other designation in any official publication of the statutes or ordinances. The court shall thereupon take judicial notice thereof

(j) **Libel and slander.**

(j)(1) *Pleading defamatory matter.* It is not necessary in an action for libel or slander to set forth any intrinsic facts showing the application to the plaintiff of the defamatory matter out of which the action arose, but it is sufficient to state generally that the same was published or spoken concerning the plaintiff. If such allegation is controverted, the party alleging such defamatory matter must establish, on the trial, that it was so published or spoken

(j)(2) *Pleading defense.* In his answer to an action for libel or slander, the defendant may allege both the truth of the matter charged as defamatory and any mitigating circumstances to reduce the amount of damages, and, whether he proves the justification or not, he may give in evidence the mitigating circumstances

(k) **Renew judgment.** A complaint alleging failure to pay a judgment shall describe the judgment with particularity or attach a copy of the judgment to the complaint

(*l*) **Allocation of fault.**

(*l*)(1) A party seeking to allocate fault to a non-party under Title 78B, Chapter 5, Part 8 shall file

(*l*)(1)(A) a description of the factual and legal basis on which fault can be allocated, and

(*l*)(1)(B) information known or reasonably available to the party identifying the non-party, including name, address, telephone number and employer If the identity of the non-party is unknown, the party shall so state

(*l*)(2) The information specified in subsection (*l*)(1) must be included in the party's responsive pleading if then known or must be included in a supplemental notice filed within a reasonable time after the party discovers the factual and legal basis on which fault can be allocated but no later than the deadline specified in the discovery plan under Rule 26(f) The court, upon motion and for good cause shown, may permit a party to file the information specified in subsection (*l*)(1) after the expiration of any period permitted by this rule, but in no event later than 90 days before trial

(*l*)(3) A party may not seek to allocate fault to another except by compliance with this rule

[Amended effective November 1, 2003, May 2, 2005, November 1 2008]

Cross References

Joinder of defendants allocation of fault to non-party description of factual and legal basis on which fault can be allocated and information identifying non-party, see § 78B-5-821

Library References

Damages ⇐142
Limitation of Actions ⇐176 to 192
Pleading ⇐46 18 59
Westlaw Key Number Searches 302k46 302k18 302k59 115k142, 241k176 to 241k192

C J S Damages §§ 225 to 228
C J S Limitations of Actions §§ 269 to 285 287 to 290
C J S Pleading §§ 70 to 71 96 136 to 138 162 165

Research References

Forms

Am Jur Pl & Pr Forms Labor and Labor Relations § 3 Procedural Rules References

United States Supreme Court

Standing,

Challenging constitutionality of legislation see Diamond v Charles U S Ill 1986 106 S Ct 1697 476 U S 54 90 L Ed 2d 48

Federal antitrust action necessity of proving injury see Cargill Inc v Monfort of Colorado Inc U S Colo 1986 107 S Ct 484 479 U S 104 93 L Ed 2d 427

Injury in fact, qui tam suit brought by individual under False Claims Act, state not subject to liability in federal court Eleventh Amendment immunity, see Vermont Agency of Nat Resources v

ADDENDUM D

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH,	:	MEMORANDUM DECISION
Plaintiff,	:	CASE NO. 080907678
vs.	:	
APOTEX CORPORATION; BAXTER HEALTHCARE CORPORATION; BOEHRINGER INGELHEIM CORPORATION; MALLINCKRODT INC.; CSL BEHRING; FOREST LABORATORIES, INC.; MORTON GROVE PHARMACEUTICALS, INC.; MUTUAL PHARMACEUTICAL COMPANY, INC.; NOVARTIS PHARMACEUTICALS CORPORATION; OTSUKA AMERICA, INC.; PFIZER, INC.; QUALITEST PHARMACEUTICALS, INC.; SCHERING-PLOUGH CORPORATION; SCHWARZ PHARMA USA HOLDINGS, INC.; TARO PHARMACEUTICALS USA, INC.; UPSHER-SMITH, INC.; and WYETH, INC.,	:	
Defendants.	:	

This matter came before the Court for a hearing on December 19, 2008, in connection with defendant Pfizer, Inc.'s ("Pfizer") Motion to Dismiss the Amended Complaint. The Court notes that the majority of the remaining defendants joined in Pfizer's Motion. However, certain defendants, either individually or as groups, filed supplemental Memoranda identifying additional bases for dismissal that are specific

to them.[1] At the conclusion of the hearing, the Court took the matter under advisement to further consider the parties' written submissions, the relevant legal authority and counsel's oral argument. Being now fully informed, the Court rules as stated herein.

LEGAL ANALYSIS

At the outset, the Court notes that Pfizer's Motion to Dismiss is brought pursuant to both Rule 9(b) and Rule 12(b)(6) of the Utah Rules of Civil Procedure and seeks dismissal of the State of Utah's (the "State") Amended Complaint. The Amended Complaint alleges that the defendant pharmaceutical companies committed fraud in connection with the pricing of prescription drugs. Specifically, the defendants are alleged to have knowingly and falsely inflated pricing information, which the State then relied on in determining reimbursement rates under its Medicaid program. The State's first claim for relief alleges that "[d]efendants issued false and inflated AWP, WAC and/or Direct Price information[2] for publication by the industry reporting services . . ." in violation of the Utah False Claims Act, Utah Code Ann., § 26-20-1, et.

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[1] Defendants filing supplemental memoranda include Defendant Boehringer Ingelheim Corporation ("BIC"), defendants Mallinckrodt, Inc. and Taro Pharmaceuticals USA, Inc. ("Generic Defendants") and defendant Morton Grove Pharmaceuticals, Inc. ("Morton Grove").

[2] In discussing the pricing information, the parties have used a number of acronyms. Since these acronyms are commonly understood and used by the parties, the Court will not define them herein.

seq. The State's second claim for relief is premised on fraudulent misrepresentation.

In its Motion, Pfizer first argues that while the State's fraud based claim and its False Claims Act claim require compliance with Rule 9(b), the State has failed to plead these claims with particularity. Pfizer complains that the Amended Complaint does not delineate each individual defendants' alleged misconduct, does not elaborate as to which defendant reported which false and inflated prices and does not identify which defendant provided such allegedly inflated pricing information to the "industry reporting services." Pfizer also points out that the Amended Complaint fails to identify when and to whom the alleged misstatements were made.

Pfizer has cited a number of cases which identify the requirements for pleading fraud with particularity. These cases indicate that a plaintiff must plead with specificity the relevant surrounding facts, such as the time, place and contents, of false representations, as well as the identity of the person making the misrepresentation. In other words, the party must typically identify the "who, what, where, when, and how" of the alleged fraud.

Furthermore, when the case involves multiple defendants, the plaintiff is required to set forth separately the acts complained of by each defendant. See Armed Forces Ins. Exch. v. Harrison, 70 P.3d 35, 40 - 41 (Utah 2003). See also Cook v. Zions First Nat'l Bank, 645 F. Supp.

423, 424 (D. Utah 1986) (indicating that Rule 9(b) particularity requirements are "especially important in cases involving multiple defendants").

Pfizer has also cited a number of cases which apply this heightened pleading standard in the specific context of litigation involving claims of pharmaceuticals overstating prescription drug prices. It appears that these cases are typically brought by states and private insurers who reimburse and patients who have made coinsurance payments, all based on published AWP's, which are alleged to be false and inflated. These cases are particularly instructive because they identify how shortcomings in pleading with particularity can be re-pled to provide greater specificity of allegations in order to meet Rule 9(b) requirements.

Notably, the State has tacitly acknowledged its failure to plead with particularity. The State's reasoning for not doing so is that the defendants are already "on notice of the claims asserted herein as a result of the many investigations and actions undertaken around the country on this same subject." (Amended Complaint at para. 56). The Court is not persuaded by the State's notion that since the defendants "must know" what they did wrong, it can avoid Rule 9(b) pleading requirements. To the contrary, the State has the burden to articulate its fraud claims with specificity, including identifying the offender and how the conduct at issue fits the elements of fraud.

The Court is similarly unpersuaded by the State's argument that this Court can simply relax the Rule 9(b) standards. First, Pfizer has cited Tenth Circuit case law specifically declining to relax the requirements of Rule 9(b) and instead indicating that "[d]efendants are under no obligation to research missing information for each specific claim. Rather, plaintiff must plead [its] claim with sufficient particularity that the defendants are on notice of which specific claims are allegedly false." U.S. ex rel. Sikkenga v. Regence Blueshield of Utah, 2001 U.S. Lexis 25717 (D. Utah Nov. 27, 2001).

Further, the Court is not convinced that the State is unable to obtain essential information regarding the defendants' pricing methods, such that relaxing the Rule 9(b) standard is warranted. Indeed, Exhibit A to the State's Amended Complaint, which contains a list with "a few representative examples" of the specific instances where the State believes prices were inflated belies the State's position that the essential facts "resides only with the defendants." In addition, it appears that the State is currently in the process of conducting a comprehensive analysis which it predicts will yield the essential information.

Overall, after considering the parties' respective legal positions, the Court determines that the State's conclusory allegations fall short of satisfying Rule 9 b . The State has failed to set forth even minimal facts in identifying the specific drugs manufactured or sold by each

individual defendant for which they provided an allegedly fraudulent or false price. The broadly-worded, blanket allegations of fraud in the Amended Complaint against the defendants as a collective will not suffice under Rule 9(b).

However, rather than dismissing the State's Amended Complaint, the Court grants the State leave to amend in order to (1) identify the specific drug at issue; (2) identify the specific defendant involved in that drug's sale, manufacture or for which they provide prices for; (3) the allegedly false publication of that specific drug's pricing, to whom that publication was made and when; and (4) whether the State actually used or relied on the allegedly false pricing information which was reported in setting reimbursement rates. To the extent possible, the State should also identify the actual price that should have been published and identity of the party purchasing the drug.

Further, with respect to allegations that the defendants engaged in a practice which has been termed as a "marketing of the spread" between AWP and WAC, the State must also identify (1) the specific defendant engaging in this practice; (2) specifics of how providers were induced to purchase the specific drug i.e. provision of free goods, educational grants and other incentives and 3) the actual purchase price of the drug to the pharmacy and/or physician.

With respect to the State's claim under the False Claims Act, a fundamental element is the submission of a claim for a medical benefit

The State's Amended Complaint does not allege with specificity that any of the defendants submitted claims to the State or directed others to submit claims. Further, it remains unclear what benefit the defendants derived directly from the State, rather than from the purchase of their drugs by physicians and pharmacies. The State's amendment should address these shortcomings.

With respect to BIC, the State should focus on this company's separate corporate existence and identify only those drugs for which BIC, and not its corporate subsidiaries, is legally responsible. It appears that three of BIC's subsidiaries are mentioned in the Amended Complaint and may be responsible for certain of the "representative" drugs, but they are presently not named as defendants and have not been served.

With respect to the Generic Defendants, it appears that federal regulations require reimbursements with benchmarks that are not dependent on AWP. Yet, the Amended Complaint is focused on published AWPs and does not allege false representations with reference to FUL or MAC or the usual and customary charge benchmarks which make up the standard of reimbursement for generic drugs. The State's amendment should identify how allegedly false publications of AWPs for generic drugs altered or influenced the unique standard of reimbursement which applies to generic drugs. The State should further identify which, if any, generic drugs were reimbursed at the AWP-based standard and why the State deviated from the general standard of reimbursement for generic drugs

The remaining issue presented by the defendants' Motion is whether the 2007 amendments to the Utah False Claims Act apply retroactively The State presently relies on the 2007 version of the Act in its request for relief

The parties agree that amendments are prospective unless expressly made retroactive by the legislature The State's position is that § 26-20-15(2) of the Act evidences an intent that the amendments be retroactive Section 26-20-15(2) provides that "[a] civil action brought under this chapter may be brought for acts occurring prior to the effective date of this section if the limitations period set forth in Section (1) has not lapsed "

The defendants counter that this retroactivity provision is located only in the amended statute of limitations section of the Act and does not apply to the Act in the entirety The defendants then compare other Acts which were amended, where the legislature expressly made liability retroactive In each of these Acts (i e the Hazardous Substances Mitigation Act and the Utah Underground Storage Act), the legislature specifically stated that its intent was to make the liability, as determined under the particular Act, apply retroactively

The Court agrees with the defendants and determines that the absence of such language in the amendments of the mens rea or penalty sections of the amended False Claims Act is telling The Court rules that only

the amendment extending the statute of limitations period was intended to be retroactive.

To summarize, instead of granting the defendants' Motions to Dismiss, the Court will allow the State to file a Second Amended Complaint consistent with the Court's guidelines, as outlined above. The State must file its Second Amended Complaint within 45 days of this Memorandum Decision or the Court will enter a dismissal of its Amended Complaint on the grounds that the State failed to plead its claims with sufficient particularity.

Because the Court will permit the State to amend its Amended Complaint, it does not reach the issue of whether the State's claims for fraud and violation of the False Claims Act are also susceptible to dismissal under Rule 12(b)(6).

This Memorandum Decision will stand as the Order of the Court.

Dated this_____day of February, 2009.

/s/ 2/13/09

TYRONE E. MEDLEY
DISTRICT COURT JUDGE

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Memorandum Decision, to the following, this 13 day of February, 2009:

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/S/

ADDENDUM E

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH,	:	MEMORANDUM DECISION
Plaintiff,	:	CASE NO. 080907678
vs.	:	
APOTEX CORPORATION; BAXTER INTERNATIONAL, INC.; BOEHRINGER INGELHEIM CORPORATION; MALLINCKRODT INC.; CSL BEHRING; FOREST LABORATORIES, INC.; MORTON GROVE PHARMACEUTICALS, INC.; MUTUAL PHARMACEUTICAL COMPANY, INC.; NOVARTIS PHARMACEUTICALS CORPORATION; OTSUKA AMERICA, INC.; PFIZER, INC.; QUALITEST PHARMACEUTICALS, INC.; SCHERING-PLOUGH CORPORATION; SCHWARZ PHARMA USA HOLDINGS, INC.; TARO PHARMACEUTICALS USA, INC.; UPSHER-SMITH, INC.; and WYETH, INC.,	:	
Defendants.	:	

This matter came before the Court for a hearing on December 11, 2009, in connection with the defendant pharmaceutical companies' second round of Motions to Dismiss the State's Second Amended Complaint. The Court notes that defendant Pfizer, Inc.'s Motion to Dismiss has been joined in by the majority of the defendants (the "Pfizer defendants"). Defendant Morton Grove Pharmaceuticals Inc. ("Morton") has filed separate Motions to Dismiss. A group of defendants which include defendants

Mallinckrodt, Inc., Taro Pharmaceuticals USA, Inc. and Upsher-Smith Laboratories, Inc. ("Generic Defendants") and defendant Boehringer Ingelheim Corporation ("BIC") have also filed separate Supplemental Memoranda in support of their positions seeking dismissal.

At the conclusion of the hearing, the Court took the matter under advisement to further consider the parties' respective legal positions and written submissions, the relevant legal authority and counsel's oral argument. Being now fully informed, the Court rules as stated herein.

LEGAL ANALYSIS

The defendants' Motions seek dismissal of the State's Second Amended Complaint under Utah Rules of Civil Procedure 9(b) and 12(b)(6). The defendants argue that the State has essentially ignored the Court's prior Memorandum Decision, dated February 13, 2009, and that its Second Amended Complaint contains the same type of pleading deficiencies addressed by the Court in that Decision

According to the defendants, the State's Second Amended Complaint once again fails to plead with particularity its claims for common law fraudulent misrepresentation and for relief under the Utah False Claims Act. In addition, the defendants assert that dismissal is warranted under Rule 12(b)(6) because the Second Amended Complaint does not plead the necessary elements of the State's claims, including actual fraudulent misrepresentations and the submission of false claims under the False Claims Act. The defendants point, for example, to the State's failure

to plead its reliance on the false pricing allegedly supplied to industry reporting services in setting reimbursement rates.

The Pfizer defendants make a separate argument for dismissal under Rule 12(b)(6) based on the statute of limitations. Prior to April 30, 2007, the statute of limitations under the Utah False Claims Act was one year. The Act was amended, effective April 30, 2007, to increase the statutory limitations period to six years after the violation, or three years after discovery, not to exceed ten years after the violation. In the prior Decision, the Court ruled that "the amendment extending the statute of limitations period was intended to be retroactive." The Pfizer defendants now argue that the logical progression to the Court's ruling is that the amended statute of limitations applies only to claims that were not already barred under the prior version of the statute. Since the initial limitations period was one year, the Pfizer defendants reason that all of the State's claims for conduct alleged to have occurred on or before April 30, 2006, are time-barred.

BIC's supplemental brief argues that the State has again lumped it with several independent subsidiaries who are not even named or served defendants in this case. BIC points out that despite the Court's directive to "identify only those drugs for which BIC, and not its corporate subsidiaries, is legally responsible," the Second Amended Complaint continues to refer to the "Boehringer Defendants" as a collective group.

With respect to the Generic Defendants, they again detail the unique reimbursement method that applies to their specific drugs. The prior Memorandum Decision ordered the State to identify how the allegedly false publication of AWP's for generic drugs altered this method, which drugs were reimbursed using a different method and why the State deviated from the general method of reimbursement. The Generic Defendants argue that the State has failed to provide any of this information, particularly with respect to how the typical method of reimbursement was altered or influenced by the allegedly inflated AWP's provided by the Generic Defendants.

In Opposition, the State maintains that its Second Amended Complaint "vastly exceeds" the notice pleading requirements. The State again takes the position that "[t]he Defendants know exactly what is at issue." This precise argument was previously rejected by the Court and its Memorandum Decision specifically indicated that each of the defendants was entitled to know what they allegedly did wrong.

The State next asserts that it has now listed the specific drugs at issue in Exhibit A to its Second Amended Complaint. However, this list also contains drugs that the defendants did not manufacture and products that are referenced only by their chemical compounds. Exhibit A also identifies non-prescription drugs and broad categories of drugs such as "antibiotic" and "antacid." It also references medical conditions such as "arthritis" and "prenatal." The Court agrees with the defendants that

this list is not helpful and falls far short of the applicable pleading requirements. Indeed, the State was required to identify the specific drug at issue for each defendant, the actual prices that should have been published and the identity of the purchaser. Exhibit A does not provide this information.

With respect to group pleading, the State asserts that "the Second Amended Complaint makes clear that each Defendant stands on the same footing in that each Defendant in this case falsely reported and/or suppressed the true prices of its drugs over the relevant time period in essentially the same manner." The State re-argues that there is nothing wrong with attributing conduct to "all defendants" in this type of context since they had a uniform practice in reporting allegedly false prices. Again, the Court previously rejected this argument and ruled that "broadly-worded, blanket allegations of fraud . . .against the defendants as a collective will not suffice under Rule 9(b)."

The State again asserts that the Court should apply a relaxed standard and as to the Utah False Claims Act, the State re-argues its prior position that Rule 9(b) has no application to this Act. The Court previously rejected this argument and concluded that Rule 9(b) applies to the State's claims. Further, the two supplemental cases that the State relies on, United States v. McKesson Corp., 2009 WL 3176168 (N.D. Miss.), and United States ex rel. Grubbs v. Kanneganti, 565 F.3d 180 (5th

Cir. 2009), confirm that claims under the False Claims Act must meet the heightened pleading standard of Rule 9(b).

Overall, the State maintains that the level of pleading required by the Court in its Memorandum Decision is tantamount to the presentation of evidence. During oral argument, the State's counsel indicated that Grubbs was the State's best case in support of its position that a plaintiff alleging the submission of false claims need not detail its allegations at the pleading stage and may instead provide the surrounding information later, at the "proof stage."

After considering the parties' respective legal arguments, the Court determines that the defendants' Motions to Dismiss are well-taken and that the State's Second Amended Complaint must be dismissed with prejudice under both Rule 9(b) and Rule 12(b)(6).

First, the Court rules that the State's Second Amended Complaint fails to satisfy the particularity requirements of Rule 9(b). The Court's prior Memorandum Decision identified in great detail the shortcomings of the State's Amended Complaint and specifically articulated what was required in order for the State to meet its burden. The Court rules that the State did not comply with the Court's directions and failed to add the considerable detail required in order to meet this burden.

Once again, the State has failed to identify each defendant's allegedly fraudulent misrepresentations and False Claims Act violations

with particularity; thereby affording the defendants no particularized notice of the allegations against them individually. Indeed, the Second Amended Complaint merely offers broad conjecture with respect to statements and/or claims that were allegedly false or fraudulent and that were made by the defendants as a group. The State has failed to sufficiently identify the individual defendant's misrepresentations, the State's reliance and the consequences thereof.

Moreover, the submission of Exhibit A, which the State relies on to demonstrate its good faith effort to comply with the Memorandum Decision, is far too general to satisfy Rule 9(b) The failure to identify the allegedly false publication of each specific drug's pricing, to whom that publication was made and when, renders the Second Amended Complaint fatally deficient and unspecific. As the Pfizer defendants point out, the State merely identifies the same fifteen-year period for all publications of all prices for all drugs by all defendants. The Court is of the opinion that to find that plaintiff's Second Amended Complaint satisfies Rule 9(b) would render the particularity requirements of Rule 9(b) meaningless.

With respect to the State's False Claims Act claims, the Court remains convinced that these claims are subject to the particularity requirements of Rule 9(b) The State's own supplemental cases, Grubbs and McKesson, confirm this point Further, the State's interpretation of these cases as purportedly providing a relaxed standard at the

pleading stage, with proof to follow, is inapposite of the holdings of those cases. Indeed, those cases uniformly held that "to plead with particularity the circumstances constituting fraud for a False Claims Act . . . claim, a relator's complaint, **if it cannot allege the details of an actually submitted false claim, may nevertheless survive by alleging particular details of a scheme to submit false claims paired with reliable indicia that lead to a strong inference that claims were actually submitted.**" McKesson, 2009 WL 3176168 at *6; Grubbs, 565 F.3d at 190 (Emphasis added).

In McKesson, the court determined that the government had alleged sufficient detail concerning such a scheme. Indeed, the government had provided significant detail and specific examples of the defendants submitting false records In evaluating the government's claims under Rule 12(b)(6), the court found these allegations to be sufficient in detailing a conspiracy in furtherance of a scheme.

In Grubbs, Dr Grubbs, a psychiatrist, alleged that his employer and other doctors billed Medicare and Medicaid for services not performed. The action was brought under the False Claims Act. As with McKesson, the distinguishing fact is that the Grubbs case had "simple, concise and particular allegations" of fraud, including the particular workings of the scheme. The allegations included dates and times of meetings, attempts to assist Dr Grubbs in falsifying medical records, specific

instances of unprovided services, etc. That level of detail and particularized allegations of a scheme are lacking in this case, rendering Grubbs and McKesson relevant only to the point that Rule 9(b) applies to a complaint filed under the False Claims Act.

Based on the foregoing, the Court rules that the State has failed to satisfy the requirements of Rule 9(b) with respect to its claim under the False Claims Act. The defendants make the valid point that the State has again failed to allege specific facts indicating that the defendants communicated directly with the State, let alone submitted a claim to the State. Yet, the actual submission of a false claim is an essential element to any complaint seeking relief under Utah's False Claims Act. See Utah Code Ann. § 26-20-7.

Further, while the Second Amended Complaint vaguely alludes to the defendants directing others to submit false claims, the State does not identify these other individuals and their role in the submission of the allegedly false claims. Equally significant is the lack of allegations concerning the benefit which the defendants derived directly from the State. The State merely concludes that a benefit must have been derived and "ultimately ended up in the pockets of the defendants."

To summarize, the Court determines that the Second Amended Complaint phrases its allegations in broad, vague language that cannot withstand the strictures of Rule 9(b). Therefore, the defendants' Motions premised on Rule 9(b) are granted.

As additional grounds for dismissal, the Court grants the Pfizer defendants' Motion on statute of limitations grounds. The Court specifically adopts the Pfizer defendants' reasoning in ruling that the State's claims for conduct alleged to have occurred on or before April 30, 2006, are indeed time-barred as a matter of law

The Court also rules that the State's Second Amended Complaint is subject to dismissal under Rule 12(b)(6). In this regard, the Court's previous analysis concerning the shortcomings of the Second Amended Complaint with respect to Rule 9(b) pleading standards apply equally to its analysis under Rule 12(b)(6).

Specifically, not only has the State failed to plead with particularity, but has also failed to allege fundamental elements of common law fraudulent misrepresentation and for relief under the Utah False Claims Act Most notable is the State's failure to plead that the pricing information supplied by the individual defendants, as opposed to the defendants in general, directly affected its reimbursement rates While the Second Amended Complaint generally states that Utah Medicaid relied on certain pricing information, there are no specific allegations explaining the relationship between the individual defendant's alleged false reporting of AWPs and the reimbursement formulas relevant to the drugs manufactured by that specific defendant [1] Indeed, the State has

[1]This is particularly true with respect to the Generic Defendants, where the State has essentially admitted that inflated AWPs are primarily relevant with respect to reimbursement of

simply not pled how the individual defendant's actions led the State to set its reimbursement rates or how it acted in reasonable reliance on the pricing information. The State has also failed to allege that it was induced to act by the defendants' alleged misrepresentations.

While the State generally alleges that the AWPs were inflated, its inability to plead reasonable reliance may be explained by its public acknowledgment in 1999 that it understood that actual acquisition costs for generic drugs was 60.1% below AWP and that AWP does not in fact reflect market prices.[2] Since the State knew that published AWPs did not represent actual market averages, it cannot fulfill two required elements of its False Claims Act claim, namely that these defendants knowingly made a false claim and that the State was deceived by published AWP's in setting its Medicaid reimbursement formula.

Likewise, as the Court discussed above, the State has failed to include specific allegations pertaining to how any defendant submitted or caused to be submitted a false claim, a key element of an action under

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brand name drugs.

[2] See State of Utah Dep't of Health, Div. Of Health Fin., Medicaid Pharmacy - Acquisition Cost of Generic Prescription Drug Products (Feb. 1999) (Attached as Exhibit 2 to the Generic Defendants' Reply Memorandum). Under Green River Canal Co. v. Thayne, 84 P.3d 1134, 1145 n.8 (Utah 2003), the Court may take judicial notice of this document. Further, under Alvarez v. Galetka, 933 P.2d 987, 990 n. 6 (Utah 1997), "items attached to pleading, **items of public record**, and items in trial record will not covert 12(b)(6) motion to rule 56 motion for summary judgment." (Emphasis added).

the False Claims Act. Further, to establish a claim under the False Claims Act, as well as common law fraudulent misrepresentation, the State must allege each individual defendant's intent to deceive, which it has failed to do.

Based on the foregoing and on the additional grounds set forth in the defendants' moving papers, which are incorporated herein by this reference, the Court grants their Motions to Dismiss. Counsel for the various groups of defendants are to prepare Orders consistent with this Memorandum Decision and Rule 7(f), Utah R. Civ. P., but also containing details specific to their respective individual positions, for the Court's review and signature. The Court would prefer that counsel meet and confer in an effort to submit Orders approved as to form by counsel for plaintiff. If those efforts fail, then Rule 7(f) will control.

Dated this 26 day of February, 2010.

/S/

TYRONE E. MEDLEY
DISTRICT COURT JUDGE

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I hereby certify that I mailed a true and correct copy of the foregoing Memorandum Decision, to the following, this 26 day of February, 2010:

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ADDENDUM F

S. PRESCRIBED DRUGS

Prescribed drugs will be reimbursed based on an established product cost plus a dispensing fee. The payment for individual prescriptions cannot exceed the amount billed. The amount billed must be the usual and customary charge to the private pay patient. The following methodology is used to establish Medicaid payments:

Except for special category fees, reimbursement will be the lower of:

1. The Utah maximum allowable cost (MAC) plus a reasonable dispensing fee or the provider's usual and customary charge (billed charge) to the general public;

2. The Utah estimated acquisition cost (EAC) plus a reasonable dispensing fee or the provider's usual and customary charge (billed charge) to the general public.

Federal "Upper Limit"

The federal upper limit is the maximum allowable ingredient cost reimbursement established by the Department of Health and Human Services, Health Care Financing Administration, for selected multiple-source drugs. The aggregate cost of product payment for the drugs on the federal upper limit list will not exceed the aggregate established by Health Care Financing Administration.

Average Wholesale Price

The Average Wholesale Price (AWP) is determined for each drug by the Utah contract with American Druggist, Blue Book First Data Bank. They provide a monthly update of drug prices for the Reference File. First Data Bank used AWP from Wholesalers in many states for determining AWP in specific regions.

Utah MAC

Utah MAC is the Maximum Allowable Cost reimbursement established by the Utah Department of Health, Division of Health Care Financing, for selected multiple-source (generic) drugs not appearing on the federal upper limit list. These drugs are listed in the *Pharmacy Provider Manual.*

S. PRESCRIBED DRUGS (Continued)

Utah EAC

The Utah Estimated Acquisition Cost (EAC) is currently AWP minus 17 percent. This estimate has been established using information provided by a survey conducted by the Utah Department of Health. Effective July 1, 2009, the AWP will be AWP minus 15 percent.

Dispensing Fee

In setting the basic dispensing fee, the state will give consideration to costs shown on periodic operation surveys, in-house studies of dispensing costs, national and regional data, and economic trends and conditions. The Utah base dispensing fee is $3.90.

Special Category Fees

1. Payment for insulin, birth control pills, and non-legend (OTC) drugs will be the lowest of:

   a. Billed charge;
   b. EAC + special category fee C;
   c. Utah MAC + special category fee C; or
   d. AWP + special category fee not to exceed the maximum on the Federal upper limits list.
   e. Special Category fee C = $1.00

2. Payment for non-legend OTC antacid liquids will be the lowest of:

   a. Billed charge:
   b. EAC + special category fee F;
   c. Utah MAC + special category fee F; or
   d. AWP + special category fee not to exceed the maximum on the Federal upper limit list.

   Category fee F is calculated as follows: drug quantity ÷ package size x $0.50

3. Differential fee payment for select drugs reconstituted for Home I.V. infusion as typically prepared by a specialty pharmacy. Specialty pharmacies have low volume but high overhead expenses. The Department of Justice (DOJ) in year 2000 re-priced the AWP for 437 NDC specific products. The re-priced products necessitated four new dispensing fees. The four fees are defined as category J, category K, category L, and category M.

S. PRESCRIBED DRUGS (Continued)

Special Category Fees (Continued)

Table 1 shows unit values assigned for each category to establish the fee. An asterisk (*) equals one unit value. Items with two or more asterisks have a higher value.

Table 1
Home Infusion Drug Categories

Category 'B' or 'C'	Category 'J'	Category 'K'	Category 'L'	Category 'M'
Traditional technician input Point-of-Sale Pharmacist input Fixed overhead costs	Category B or C plus *Labor II factor *clinical monitoring *prefilled syringes/PB *horizontal hood *technical input	Category J plus **** clinical monitoring *** quality assurance *** labor factor	Category K plus *Replacement into individual doses such as a syringe *recalculations from vial to syringe to bag *large bulk inventory costs *peer review	Category L plus *Double gloves **Gown **Vertical Hood *labor factor V *OSHA documentation *Special handling *special storage *clean room *hazardous waste
dispensing fee B or C B=$3 90, C=$1 00	dispensing fee J $8 90	dispensing fee K $18 90	dispensing fee L $22 90	dispensing fee M $33 90

The special category fee is a negotiated fee initially developed in cooperation with the Utah Pharmaceutical Association and other key pharmacists to apply to specific drugs historically advertised and dispensed to the general public at minimal prices. This fee may be periodically changed to reflect changing market forces.

S PRESCRIBED DRUGS (Continued)

Rural Pharmacies

In recognition of lower volume and higher acquisition costs, rural pharmacies are paid a $ 50 dispensing fee differential The differential is paid in addition to the dispensing fee paid to urban pharmacies Rural is defined as those pharmacies located outside of Weber, Davis, Utah and Salt Lake counties

ADDENDUM G

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Attorneys for Plaintiff

IN THE THIRD JUDICIAL DISTRICT COURT OF
SALT LAKE COUNTY

STATE OF UTAH

THE STATE OF UTAH ,

Plaintiff,

vs.

APOTEX CORPORATION; BAXTER INTERNATIONAL, INC.; BOEHRINGER

SECOND AMENDED COMPLAINT AND JURY DEMAND

Civil No. 080907678

Judge Tyrone E. Medley

INGELHEIM CORPORATION; MALLINCKRODT, INC.; CSL BEHRING; FOREST LABORATORIES, INC.; MORTON GROVE PHARMACEUTICALS, INC.; MUTUAL PHARMACEUTICAL COMPANY, INC.; NOVARTIS PHARMACEUTICAL CORPORATION; PFIZER, INC.; QUALITEST PHARMACEUTICALS, INC.; SCHERING-PLOUGH CORPORATION; SCHWARZ PHARMA US HOLDINGS, INC.; TARO PHARMACEUTICALS, U.S.A., INC.; UPSHER-SMITH, INC.; and WYETH, INC.

Defendants.

Plaintiff, the State of Utah ("State"), by and through its Attorney General Mark L. Shurtleff, files this Complaint against the above-named Defendants and alleges, on information and belief, the following:

INTRODUCTION

1. The Defendants have engaged in false, misleading, willful, unfair, and deceptive acts and practices in the pricing and marketing of their prescription drug products. The Defendants' fraudulent pricing and marketing of their prescription drugs have impacted elderly, disabled, and poor Utah citizens covered by the State's Medicaid program ("Utah Medicaid") by causing Utah Medicaid to pay grossly excessive prices for the Defendants' prescription drugs. Utah Medicaid is administered by the Division of Health Care Financing within the single state agency, the Utah Department of Health.

2. Fair and honest drug pricing is a matter of great importance to the State and its citizens. Expenditures by the State for prescription drug reimbursement have increased dramatically in the past several years as a result, in part, of Defendants' fraudulent pricing

scheme. Each year Utah spends hundreds of millions of dollars on prescription drugs under the Utah Medicaid program. In fiscal year 2005 alone, Utah Medicaid spent $207.6 million on prescription drugs. Since 1990, Utah Medicaid prescription drug expenditures have increased exponentially. This increase in prescription drug costs in recent years has contributed to a health care funding crisis within the State that requires action to ensure fair dealing between the Defendants and the State.

3. The State is accountable to its citizens and taxpayers as to how it spends limited State resources, and it is obligated to pursue any entity whose unlawful conduct has led to the overspending of State funds. Consequently, the State, by and through Attorney General Shurtleff, brings this action to recover amounts overpaid for prescription drugs by Utah Medicaid, as a result of the fraudulent and willful conduct of Defendants. The State further seeks to prohibit and permanently enjoin Defendants from continuing to perpetrate their drug-pricing scheme, to require Defendants to publicly disclose true drug prices, and to require Defendants to account for and disgorge all profits obtained by Defendants as a result of their improper and unlawful actions.

4. This lawsuit seeks legal redress for the fraudulent and willful pricing conduct of Defendants, who have profited from their wrongful acts and practices at the expense of the State.

JURISDICTION AND VENUE

5. Jurisdiction over the subject matter of this cause of action is based upon the False Claims Act, Title 26, Chapter 20 of the Utah Health Code, which provides remedies to redress Defendants' actions under Utah Code Annotated § 26-20-1 et seq.

6. Personal jurisdiction over these Defendants is proper under the Utah Long Arm Statute as codified in §§ 78-27-22 and 78-27-24 of the Utah Code Annotated.

7. Venue is proper in the Third Judicial District and Salt Lake County pursuant to Utah Code Annotated § 78-13-7 in that many of the unlawful acts committed by Defendant were committed in Salt Lake County, including the making of false statements and misrepresentations of material fact to the State of Utah, its departments, agencies, instrumentalities and contractors, including the Utah Medicaid Program, and relied upon by Utah Medicaid to reimburse providers for the prescription drug needs of the Utah Medicaid recipients.

PARTIES

8. Plaintiff is the State of Utah. The State brings this action in its capacity as sovereign and on behalf of the Utah Medicaid Program. The Attorney General of the State of Utah, Mark L. Shurtleff, as chief law officer of the State of Utah is statutorily authorized to prosecute and maintain this action.

DEFENDANTS

Defendant Apotex

9. Defendant Apotex Corp. ("Apotex") is a Florida corporation with its principal place of business located at 2400 North Commerce Parkway, Suite 400, Weston, FL 33326. Apotex is engaged in the business of manufacturing, distributing, marketing, and/or selling prescription drugs that are reimbursed by Utah Medicaid.

10. The Apotex drugs at issue in this case are identified in Exhibit A, attached.

11 Defendant Apotex was involved in the sale, manufacture and pricing information for all drugs as set forth in Exhibit A.

12. Defendant Apotex made false publications for each drug identified in Exhibit A as follows: Apotex set, controlled and reported prices for said drugs to third-party compendia, including First Databank. First Databank, in turn, published prices for Apotex to the State of

Utah. These publications became relevant each and every time Utah reimbursed a provider for an Apotex drug between 1991 and 2006. The State actually relied upon this false pricing information each and every time it reimbursed a provider.

13. The State does not know the actual price that should have been published. The published price should have been reflective of actual market prices, which the Defendant keeps confidential.

The Baxter Defendants

14. Defendant Baxter International, Inc. ("Baxter International") is a Delaware corporation with its principal place of business located at One Baxter Parkway, Deerfield, IL 60015-4633.

15. Defendant Baxter Healthcare Corporation ("Baxter Healthcare"), a wholly-owned subsidiary of Baxter International, Inc., is a Delaware corporation with its principal place of business located at One Baxter Parkway, Deerfield, IL 60015.

16. Baxter International and Baxter Healthcare (collectively, the "Baxter Defendants") are diversified healthcare companies that individually, and/or in combination with one another, engage in the business of manufacturing, distributing, marketing, and/or selling prescription drugs that are reimbursed by Utah Medicaid.

17. The Baxter Defendants drugs at issue in this case are identified in Exhibit A, attached.

18. The Baxter Defendants were involved in the sale, manufacture and pricing information for all drugs as set forth in Exhibit A.

19. The Baxter Defendants made false publications for each drug identified in Exhibit A as follows: Baxter Defendants set, controlled and reported prices for said drugs to third-party

compendia, including First Databank First Databank, in turn, published prices for Baxter to the State of Utah These publications became relevant each and every time Utah reimbursed a provider for a Baxter Defendant drug between 1991 and 2006 The State actually relied upon this false pricing information each and every time it reimbursed a provider

20 The State does not know the actual price that should have been published The published price should have been reflective of actual market prices, which the Defendants keep confidential

The Boehringer Defendants

21 Defendant Boehringer Ingelheim Corporation ("BIC") is a Nevada corporation with its principal place of business located at 900 Ridgebury Road, Ridgefield, CT 06877 Boehringer includes a number of subsidiary companies that manufacture, distribute, market, and/or sell prescription drugs

22 Defendant Boehringer Ingelheim Pharmaceuticals, Inc ("BIPI") is a Delaware corporation with its principal place of business located at 900 Ridgebury Road, Ridgefield, CT 06877

23 Defendant Roxane Laboratories, Inc ("BIRI") is a Delaware corporation with its principal place of business located at 1809 Wilson Road, Columbus, OH 43228-9579

24 BIC, BIPI and BIRI (collectively "the Boehringer Defendants") are diversified healthcare companies that individually, and/or in combination with one another, engage in the business of manufacturing, distributing, marketing, and/or selling prescription drugs that are reimbursed by Utah Medicaid

25 The Boehringer Defendants drugs at issue in this case are identified in Exhibit A, attached

26. The Boehringer Defendants were involved in the sale, manufacture and pricing information for all drugs as set forth in Exhibit A.

27. The Boehringer Defendants made false publications for each drug identified in Exhibit A as follows: The Boehringer Defendants set, controlled and reported prices for said drugs to third-party compendia, including First Databank. First Databank, in turn, published prices for the Boehringer Defendants to the State of Utah. These publications became relevant each and every time Utah reimbursed a provider for a Boehringer Defendant drug between 1991 and 2006. The State actually relied upon this false pricing information each and every time it reimbursed a provider.

28. The State does not know the actual price that should have been published. The published price should have been reflective of actual market prices, which the Defendants keep confidential.

Defendant CSL Behring

29. Defendant CSL Behring ("CSL") is a Pennsylvania corporation with its principal place of business located at 1020 First Avenue, King of Prussia, PA 19406. CSL is engaged in the business of manufacturing, distributing, marketing, and/or selling prescription drugs that are reimbursed by Utah Medicaid.

30. The CSL drugs at issue in this case are identified in Exhibit A, attached.

31. Defendant CSL was involved in the sale, manufacture and pricing information for all drugs as set forth in Exhibit A.

32. Defendant CSL made false publications for each drug identified in Exhibit A as follows: CSL set, controlled and reported prices for said drugs to third-party compendia, including First Databank. First Databank, in turn, published prices for CSL to the State of Utah.

These publications became relevant each and every time Utah reimbursed a provider for a CSL drug between 1991 and 2006. The State actually relied upon this false pricing information each and every time it reimbursed a provider.

33. The State does not know the actual price that should have been published. The published price should have been reflective of actual market prices, which the Defendant keeps confidential.

The Forest Defendants

34. Defendant Forest Laboratories, Inc. ("Forest") is a Delaware corporation with its principal place of business located at 909 Third Avenue, New York, NY 10022.

35. Defendant Forest Pharmaceuticals, Inc. ("Forest Pharm"), wholly-owned subsidiary of Forest, is a Delaware corporation with its principal place of business located at 13600 Shoreline Drive, St. Louis, MO 63045.

36. Forest and Forest Pharm (collectively, the "Forest Defendants") are diversified healthcare companies that individually, and/or in combination with one another, engage in the business of manufacturing, marketing, distributing, and/or selling prescription drugs that are reimbursed by Utah Medicaid.

37. The Forest Defendants drugs at issue in this case are identified in Exhibit A, attached.

38. The Forest Defendants were involved in the sale, manufacture and pricing information for all drugs identified in Exhibit A.

39. The Forest Defendants made false publications for each drug identified in Exhibit A as follows: Forest Defendants set, controlled and reported prices for said drugs to third-party compendia, including First Databank. First Databank, in turn, published prices for the Forest

Defendants to the State of Utah. These publications became relevant each and every time Utah reimbursed a provider for a Forest Defendants drug between 1991 and 2006. The State actually relied upon this false pricing information each and every time it reimbursed a provider.

40. The State does not know the actual price that should have been published. The published price should have been reflective of actual market prices, which the Defendant keeps confidential.

Defendant Mallinckrodt

41. Defendant Mallinckrodt, Inc. ("Mallinckrodt") is a Missouri corporation with its principal place of business located at 675 McDonnell Blvd., Hazelwood, MO 63042. Mallinckrodt is engaged in the business of manufacturing, distributing, marketing, and/or selling prescription drugs that are reimbursed by Utah Medicaid.

42. The Mallinckrodt drugs at issue in this case are identified in Exhibit A, attached.

43. Defendant Mallinckrodt was involved in the sale, manufacture and pricing information for all drugs as set forth in Exhibit A.

44. Defendant Mallinckrodt made false publications for each drug identified in Exhibit A as follows: Mallinckrodt set, controlled and reported prices for said drugs to third-party compendia, including First Databank. First Databank, in turn, published prices for Mallinckrodt to the State of Utah. These publications became relevant each and every time Utah reimbursed a provider for a Mallinckrodt drug between 1991 and 2006. The State actually relied upon this false pricing information each and every time it reimbursed a provider.

45. The State does not know the actual price that should have been published. The published price should have been reflective of actual market prices, which the Defendant keeps confidential.

Defendant Morton Grove

46. Defendant Morton Grove Pharmaceuticals, Inc. ("Morton") is an Illinois corporation with its principal place of business located at 6451 W Main Street, Morton Grove, IL 60053. Morton is engaged in the business of manufacturing, distributing, marketing, and/or selling prescription drugs that are reimbursed by Utah Medicaid.

47. The Morton drugs at issue in this case are identified in Exhibit A, attached.

48. Defendant Morton was involved in the sale, manufacture and pricing information for all drugs as set forth in Exhibit A.

49. Defendant Morton made false publications for each drug identified in Exhibit A as follows: Morton set, controlled and reported prices for said drugs to third-party compendia, including First Databank. First Databank, in turn, published prices for Morton to the State of Utah. These publications became relevant each and every time Utah reimbursed a provider for a Morton drug between 1991 and 2006. The State actually relied upon this false pricing information each and every time it reimbursed a provider.

50. The State does not know the actual price that should have been published. The published price should have been reflective of actual market prices, which the Defendant keeps confidential.

Defendant Mutual

51. Defendant Mutual Pharmaceutical Company ("Mutual") is a Pennsylvania corporation with its principal place of business located at 1100 Orthodox Street, Philadelphia, PA 19124. Mutual is engaged in the business of manufacturing, distributing, marketing, and/or selling prescription drugs that are reimbursed by Utah Medicaid.

52. The Mutual drugs at issue in this case are identified in Exhibit A, attached.

53. Defendant Mutual was involved in the sale, manufacture and pricing information for all drugs identified in Exhibit A.

54. Defendant Mutual made false publications for each drug identified in Exhibit A as follows: Mutual set, controlled and reported prices for said drugs to third-party compendia, including First Databank First Databank, in turn, published prices for Mutual to the State of Utah. These publications became relevant each and every time Utah reimbursed a provider for a Mutual drug between 1991 and 2006. The State actually relied upon this false pricing information each and every time it reimbursed a provider.

55. The State does not know the actual price that should have been published. The published price should have been reflective of actual market prices. which the Defendant keeps confidential.

Defendant Novartis

56. Defendant Novartis Pharmaceuticals Corporation ("Novartis") is a Delaware corporation with its principal place of business located at One Health Plaza, East Hanover, NJ 07936-1080.

57. Novartis engages in the business of manufacturing, distributing, marketing, and/or selling prescription drugs that are reimbursed by Utah Medicaid.

58. Novartis drugs at issue in this case are identified in Exhibit A, attached.

59. Novartis was involved in the sale, manufacture and pricing information for all drugs identified in Exhibit A.

60. Novartis made false publications for each drug identified in Exhibit A as follows. Novartis set, controlled and reported prices for said drugs to third-party compendia, including First Databank. First Databank, in turn, published prices for Novartis to the State of Utah.

These publications became relevant each and every time Utah reimbursed a provider for Novartis drugs between 1991 and 2006. The State actually relied upon this false pricing information each and every time it reimbursed a provider.

61. The State does not know the actual price that should have been published. The published price should have been reflective of actual market prices, which the Defendant keeps confidential.

The Pfizer Defendants

62. Defendant Pfizer, Inc. ("Pfizer") is a Delaware corporation with its principal place of business located at 235 East 42nd Street, New York, NY 10017. With the merger of Pfizer and Pharmacia Corporation in 2003, Pfizer became the largest drug company in the world today.

63. Defendant Pharmacia Corporation ("Pharmacia") is a Delaware corporation with its principal place of business located at 235 East 42nd Street, New York, NY 10017-5755.

64. Defendant Pharmacia & Upjohn Company Corporation ("P & U"), a subsidiary of Pharmacia Corporation, is a Delaware corporation with its principal place of business located at 235 E. 42nd Street, New York, NY 10017-5703.

65. Pfizer, Pharmacia and P & U (collectively, the "Pfizer Defendants") are diversified healthcare companies that individually, and/or in combination with one another, engage in the business of manufacturing, distributing, marketing, and/or selling prescription drugs that are reimbursed by Utah Medicaid.

66. The Pfizer Defendants drugs at issue in this case are identified in Exhibit A, attached.

67. The Pfizer Defendants were involved in the sale, manufacture and pricing information for all drugs as set forth in Exhibit A.

68. The Pfizer Defendants made false publications for each drug identified in Exhibit A as follows: Pfizer Defendants set, controlled and reported prices for said drugs to third-party compendia, including First Databank. First Databank, in turn, published prices for the Pfizer Defendants to the State of Utah. These publications became relevant each and every time Utah reimbursed a provider for the Pfizer Defendants drug between 1991 and 2006. The State actually relied upon this false pricing information each and every time it reimbursed a provider.

69. The State does not know the actual price that should have been published. The published price should have been reflective of actual market prices, which the Defendant keeps confidential.

Defendant Qualitest Pharmaceuticals, Inc.

70. Defendant Qualitest Pharmaceuticals, Inc. ("Qualitest") is an Alabama corporation with its principal place of business located at 130 Vintage DR NE, Huntsville, AL 35811. Qualitest is engaged in the business of manufacturing, distributing, marketing, and/or selling prescription drugs that are reimbursed by Utah Medicaid.

71. The Qualitest drugs at issue in this case are identified in Exhibit A, attached.

72. Defendant Qualitest was involved in the sale, manufacture and pricing information for all drugs as set forth in Exhibit A.

73. Defendant Qualitest made false publications for each drug identified in Exhibit A as follows: Qualitest set, controlled and reported prices for said drugs to third-party compendia, including First Databank. First Databank, in turn, published prices for Qualitest to the State of Utah. These publications became relevant each and every time Utah reimbursed a provider for a Qualitest drug between 1991 and 2006. The State actually relied upon this false pricing information each and every time it reimbursed a provider.

A0129

74. The State does not know the actual price that should have been published. The published price should have been reflective of actual market prices, which the Defendant keeps confidential.

The Schering Defendants

75. Defendant Schering-Plough Corporation ("Schering-Plough") is a New Jersey corporation with its principal place of business located at 2000 Galloping Hill Road, Kenilworth, NJ 07033.

76. Defendant Warrick Pharmaceuticals Corporation ("Warrick"), a wholly-owned subsidiary of Schering-Plough, is a Delaware corporation with its principal place of business located at 12125 Moya Blvd., Reno, NV 89506-2600.

77. Schering-Plough and Warrick (collectively, the "Schering Defendants") are diversified healthcare companies that individually, and/or in combination with one another, engage in the business of manufacturing, distributing, marketing, and/or selling prescription drugs that are reimbursed by Utah Medicaid.

78. The Schering Defendants drugs at issue in this case are identified in Exhibit A, attached.

79. The Schering Defendants were involved in the sale, manufacture and pricing information for all drugs as set forth in Exhibit A.

80. The Schering Defendants made false publications for each drug identified in Exhibit A as follows: Schering Defendants set, controlled and reported prices for said drugs to third-party compendia, including First Databank. First Databank, in turn, published prices for the Schering Defendants to the State of Utah. These publications became relevant each and every time Utah reimbursed a provider for the Schering Defendants drug between 1991 and

2006 The State actually relied upon this false pricing information each and every time it reimbursed a provider.

81. The State does not know the actual price that should have been published. The published price should have been reflective of actual market prices, which the Defendant keeps confidential.

Defendant Schwarz

82. Defendant Schwarz Pharma USA Holdings, Inc. ("Schwarz") is a Delaware corporation with its principal place of business located at 103 Foulk Rd Suite 202, Wilmington, DE 19803. Schwarz is a wholly-owned U.S. subsidiary of Schwarz Pharma AG, a German corporation with its principal place of business located at Alfred-Nobel-Straße, 10 Monheim, Germany. Schwarz is engaged in the business of manufacturing, distributing, marketing, and/or selling prescription drugs that are reimbursed by Utah Medicaid.

83. The Schwarz drugs at issue in this case are identified in Exhibit A, attached.

84. Defendant Schwarz was involved in the sale, manufacture and pricing information for all drugs as set forth in Exhibit A.

85. Defendant Schwarz made false publications for each drug identified in Exhibit A as follows: Schwarz set, controlled and reported prices for said drugs to third-party compendia, including First Databank. First Databank, in turn, published prices for Schwarz to the State of Utah. These publications became relevant each and every time Utah reimbursed a provider for a Schwarz drug between 1991 and 2006. The State actually relied upon this false pricing information each and every time it reimbursed a provider.

86. The State does not know the actual price that should have been published. The published price should have been reflective of actual market prices, which the Defendant keeps confidential.

Defendant Taro

87. Defendant Taro Pharmaceuticals U.S.A., Inc. ("Taro"), a New York corporation with its principal place of business located at 3 Skyline Drive, Hawthorne, NY 10532. Taro is engaged in the business of manufacturing, distributing, marketing, and/or selling prescription drugs that are reimbursed by Utah Medicaid.

88. The Taro drugs at issue in this case are identified in Exhibit A, attached.

89. Defendant Taro was involved in the sale, manufacture and pricing information for all drugs as set forth in Exhibit A.

90. Defendant Taro made false publications for each drug identified in Exhibit A as follows: Taro set, controlled and reported prices for said drugs to third-party compendia, including First Databank. First Databank, in turn, published prices for Taro to the State of Utah. These publications became relevant each and every time Utah reimbursed a provider for a Taro drug between 1991 and 2006. The State actually relied upon this false pricing information each and every time it reimbursed a provider.

91. The State does not know the actual price that should have been published. The published price should have been reflective of actual market prices, which the Defendant keeps confidential.

Defendant Upsher-Smith

92. Defendant Upsher-Smith, Inc. ("Upsher-Smith") is a Minnesota corporation with its principal place of business located at 13700 1st Ave, N, Minneapolis, MN 55441. Upsher-

Smith is engaged in the business of manufacturing, distributing, marketing, and/or selling prescription drugs that are reimbursed by Utah Medicaid.

93. The Upsher-Smith drugs at issue in this case are identified in Exhibit A, attached.

94. Defendant Upsher-Smith was involved in the sale, manufacture and pricing information for all drugs as set forth in Exhibit A.

95. Defendant Upsher-Smith made false publications for each drug identified in Exhibit A as follows: Upsher-Smith set, controlled and reported prices for said drugs to third-party compendia, including First Databank. First Databank, in turn, published prices for Upsher-Smith to the State of Utah. These publications became relevant each and every time Utah reimbursed a provider for an Upsher-Smith drug between 1991 and 2006. The State actually relied upon this false pricing information each and every time it reimbursed a provider.

96. The State does not know the actual price that should have been published. The published price should have been reflective of actual market prices, which the Defendant keeps confidential.

The Wyeth Defendants

97. Defendant Wyeth, Inc. ("Wyeth"), formerly American Home Products Corp., is a Delaware corporation with its principal place of business located at Five Giralda Farms, Madison, NJ 07940.

98. Defendant Wyeth Pharmaceuticals, Inc. ("Wyeth Pharm"), a division of Wyeth, is a Delaware corporation with its principal place of business located at 500 Arcola Road, Collegeville, PA 19426.

99. Wyeth and Wyeth Pharm (collectively, the "Wyeth Defendants") are diversified healthcare companies that individually, and/or in combination with one another, engage in the business of manufacturing, distributing, marketing, and/or selling prescription drugs that are reimbursed by Utah Medicaid.

100. The Wyeth Defendants drugs at issue in this case are identified in Exhibit A, attached.

101. The Wyeth Defendants were involved in the sale, manufacture and pricing information for all drugs as set forth in Exhibit A.

102. The Wyeth Defendants made false publications for each drug identified in Exhibit A as follows. Wyeth Defendants set, controlled and reported prices for said drugs to third-party compendia, including First Databank. First Databank, in turn, published prices for the Wyeth Defendants to the State of Utah. These publications became relevant each and every time Utah reimbursed a provider for a Wyeth Defendants drug between 1991 and 2006. The State actually relied upon this false pricing information each and every time it reimbursed a provider.

103. The State does not know the actual price that should have been published. The published price should have been reflective of actual market prices, which the Defendant keeps confidential.

NATURE OF THE CASE

104. This is a civil action for damages and civil penalties pursuant to the Utah False Claims Act, Utah Code Annotated §26-20-1, et seq., and Utah Common Law No Federal Claims are asserted and are hereby expressly disavowed.

FACTUAL BACKGROUND

The Utah Medicaid Program

105. The Utah Medicaid program is a state-administered program with federal matching funds, which pays for medical care, including prescription drug benefits, for Utah's low-income and disabled citizens. The Utah Medicaid program currently covers approximately 300,000 individuals. The prescription drug benefit cost has increased dramatically in recent years from $47.5 million in 1996 to $207.6 million in 2005, an increase of 437% in nine years or a compounded annual rate of 17.8%.

106. Utah Medicaid reimburses medical providers, including physicians and pharmacists, for drugs prescribed for, and dispensed to, Utah Medicaid recipients pursuant to statutory and administrative formulas.

107. Reimbursement for pharmacy-dispensed prescription drugs under the Utah Medicaid program is based on information supplied by Defendants to industry reporting services. This information includes the following price indices: (i) Average Wholesale Price ("AWP"), which is commonly understood as the average price paid by retailers, such as hospitals, doctors and pharmacies to wholesalers, for prescription drugs and (ii) Wholesale Acquisition Cost ("WAC"), which is commonly understood as the price paid by wholesalers to the manufacturers for prescription drugs. At all times relevant to this action, Defendants were aware of Utah Medicaid's drug reimbursement formulas and procedures for pharmacy-dispensed drugs.

108. Under the federal Medicaid requirements, the State must submit plans for Utah's Medicaid programs to the federal government for approval. Those plans must

> [p]rovide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan.....as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are *consistent with efficiency, economy, and quality of care* and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area.

A0135

42 U S C § 1396a(a)(30)(A)(emphasis added) The federal Medicaid regulations limit Utah reimbursements for prescription drugs The regulations distinguish between "brand name drugs " which are still under patent protection, and "multiple source" (also called "generic") drugs, which enter the marketplace after the patent on the brand-name drug expires

109 ***Brand-name drugs*** Utah Medicaid reimbursements to providers for brand-name drugs "must not exceed, in the aggregate, payment levels that the agency has determined by applying the lower of the (1) [e]stimated acquisition costs plus reasonable dispending fees established by the agency or (2) [p]roviders' usual and customary charges to the general public " 42 C F R § 447 331(b) [1] "Estimated acquisition cost" means the agency 's "best estimate of the price generally and currently paid by providers for a drug marketed or sold by a particular manufacturer or labeler in the package size of drug most frequently purchased by providers " 42 C F R § 447 302 "Reasonable dispensing fee" means the fee that is "incurred at the point of sale or service and pays for costs in excess of the ingredient cost of a covered outpatient drug each time a covered outpatient drug is dispensed " *Id*

110 Although the Defendants may attempt to obfuscate this regulation, it could not be clearer It forbids Utah Medicaid from deliberately setting the "estimated acquisition costs' of drugs at levels which give providers as a group a systematic "spread' over what it costs them to acquire drugs Setting "estimated acquisition cost at such levels would cause Utah s Medicaid total reimbursements for brand-name drugs to exceed the sum of "estimated acquisition cost' plus the reasonable dispensing fees as determined by the agency Regardless of how much pressure an agency feels to initiate its "estimated acquisition cost" to provide profit to providers

[1] The provider's "reasonable and customary" charge is normally the list price that providers like pharmacies charge purchasers who are not entitled to the discounts that are customarily demanded and received by third party payers such as private insurers, Medicare, or Medicaid *See U S v Bruno s Inc* 54 F Supp 2d 1252 1256-58 (M I

such inflation cannot be reconciled with these regulations. "Congress enacted Title XIX of the Social Security Act [which includes Medicaid] to care for the poor and aged, not to subsidize or otherwise to benefit health care providers."

111. ***Generic drugs***. For many "generic" or multiple source drugs, the federal Center for Medicare and Medicaid Services (CMS) has set what is called a "Federal Upper Limit" (FUL) – a maximum amount that states may not exceed in reimbursing providers of the drugs subject to the FUL. Where CMS has set a FUL for a particular drug, federal regulations have provided, during most times relevant to this suit, that Utah Medicaid cannot pay more in the aggregate for these drugs than that FUL plus a reasonable dispensing fee. *See* 42 C.F.R. § 447.331, 332 (1999), now modified and renumbered as 42 C.F.R. § 447.512(a).

112. Unlike the concept of "estimated acquisition cost" as defined by the federal regulations, the concept of the FUL is not designed to forbid a profit to providers. To the contrary, the FUL, which applies to generic drugs, may provide for some degree of profit to the provider as an incentive to induce the provider to dispense a cheaper generic drug rather than the more expensive brand-name version. But the FUL is a ceiling, not a floor, on what a state can pay. As discussed below, Utah is unwilling to pay the FUL for a drug if the provider's "estimated acquisition cost" is lower.

113. As contemplated by the federal scheme, the State of Utah has set reimbursement levels for prescription drugs under the Medicaid program, through regulations issued by the Utah Department of Health, Division of Health Care Financing ("DHCF"). No Utah statute or regulation tells the DHCF to set reimbursement rates at levels that would provide a systematic

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Ala. 1999). It is relatively uncommon for a provider's "usual and customary" charge to be lower than the sum of "estimated acquisition cost" and the dispensing fee.`

"profit" for pharmacists or other providers, and as shown, above, federal regulations prohibit a systematic profit from being built into "estimated acquisition cost."

114. Between 1991 and 2006, DHCF's regulation provided that the State would reimburse for any drug by paying the drug's "estimated acquisition cost" plus the dispensing fee, unless the drug in question had a FUL that was lower than the estimated acquisition cost, in which case the DHCF would pay the FUL plus the dispensing fee. In 1989, Utah created a "Maximum Allowable Cost" (MAC) program for certain drugs. Since then, the regulation has provided that the State will pay the lowest of estimated acquisition cost, the FUL (if one exists for a drug), or the MAC (if one exists for a drug), plus, in any of the three cases, the reasonable dispensing fee. In any event, the price cannot exceed the usual and customary charge (billed charged) to the general public. Utah's MAC program had very limited use until November of 2008, at which time it was expanded due to budget constraints.

115. The Defendants' inflated AWPs were the only variable in the formulas used by the State to reimburse brand name drugs. Thus, had the Defendants' AWPs been lower, the amounts the State would have paid for brand name drugs would have been correspondingly lower as a matter of arithmetic.

116. Defendants' AWPs were an essential variable in deciding what the lowest price was in the formula for reimbursing generic drugs – i.e., the State would pay the lowest of the acquisition cost as estimated through AWP, the Federal Upper Limit if it existed for the drug in question, or the State's Maximum Allowable Cost if it existed for the drug. MAC prices or reimbursement rates are a schedule of pricing for generically equivalent drugs based upon the listed AWPs of competing generic drug manufacturers. Generic drug makers are able to push market share for their generic drugs by intentionally increasing the published AWP for a generic

drug with the intention to create a profit margin for others in the distribution chain. That profit margin is taken advantage of either directly (through reimbursement based upon AWP) or indirectly on the AWP based upon the establishment of a MAC tied to the AWP.

117. The State would have reimbursed on the basis of "estimated acquisition cost" if that cost had been the lowest of these three measures. But because the estimated acquisition cost was inflated by Defendants' inflated AWPs, the State lost the chance to make that comparison and save itself money.

The Defendants' Reporting of Inflated Pricing Information

118. Defendants knowingly, willfully, wantonly, and/or intentionally provided, or caused to be provided, false and inflated AWP, WAC, and/or other pricing information for their drugs to various nationally known drug industry reporting services, including First DataBank (a/k/a Blue Book), Medical Economics, Inc. (a/k/a Red Book), and Medispan (collectively referred to herein as "various nationally known drug industry reporting services" or "reporting services"). These reporting services published the pricing information to various reimbursers, such as Utah Medicaid, who have contracted to receive the information (either in electronic or hard copy form) as a basis to provide reimbursement to the medical or pharmacy providers who provide the drugs to patients.

119. Utah Medicaid purchased and utilized the Defendants' published AWP, WAC, and other pricing information from First DataBank (Blue Book), and Medical Economics, Inc. (Red Book). The information from Blue Book was and is used by Utah Medicaid with respect to reimbursement for pharmacy-dispensed drugs. At all relevant times to this action, Utah Medicaid relied upon the AWP, WAC, and/or other pricing information provided by Defendants

to the industry reporting services in determining the amount Utah Medicaid reimburses providers.

120. Defendants knew the false and deceptive inflation of AWP, WAC, and/or other pricing information for their drugs would cause Utah Medicaid to pay excessive amounts for these drugs. Defendants' inflated AWPs and WACs greatly exceeded the actual prices at which drugs were sold to retailers (physicians, hospitals, and pharmacies) and wholesalers. Defendants' reported AWPs and WACs were false and misleading and bore no relation to any price, much less a wholesale or retail price.

121. Defendants knowingly, willfully, wantonly, and/or intentionally concealed the true prices for their respective drugs, by trick or artifice, from Utah Medicaid. At all times relevant, each Defendant knew its own true prices which were not reported to the industry reporting services for use by state Medicaid agencies. Each Defendant also knew whether the price reported to the reporting services accurately and truthfully represented the actual prices as reflected by market experience and conditions. At all times pertinent, the Defendants' concealment of the true prices hindered Utah Medicaid from obtaining or knowing the true prices. Furthermore, the Defendants concealed the true prices knowing that Utah Medicaid relied upon the false reported prices.

122. Unless governmental or industry surveys, lawsuits, or criminal or regulatory investigations publicly reveal the true AWP or WAC for a particular drug at issue, Utah Medicaid is not privy to the actual market prices which it can then compare against the reported prices. Defendants have concealed true market pricing information from Utah Medicaid for the purpose of avoiding detection of the fraudulent scheme described herein.

123. Defendants used undisclosed discounts, rebates and other inducements, which had the effect of lowering the actual wholesale or retail prices paid by wholesalers and retailers as compared to the reported prices. In addition, Defendants employed secret agreements to conceal the lowest prices paid for their pharmaceutical products. As a result of these concealed inducements, Defendants have prevented third parties, including Utah Medicaid, from determining the true prices paid by wholesalers and retailers.

FIRST CLAIM FOR RELIEF

(Restitution, Costs and Civil Penalties under the Utah False Claims Act)

124. Plaintiff incorporates paragraphs 1 through 129 as if fully set forth herein, and further alleges as follows:

125. Defendants violated the False Claims Act as codified in the Utah Health Code at Title 26, Chapter 20 of the Utah Code Annotated. Defendants issued false and inflated AWP, WAC, and/or other pricing information for publication by the industry reporting services, in violation of Utah Code Annotated §§ 26-20-3, 26-20-4 and 26-20-7. Because of Defendants' fraudulent conduct and misrepresentations, Utah Medicaid relied on the false information in reimbursing providers for Medicaid drugs. Defendants "knowingly" acted in deliberate ignorance or reckless disregard of the truth, and in so doing, caused the State to pay false claims due to the grossly reimbursements for Defendants' prescription drugs.

126. Defendants' "false representation" regarding the price of their drugs was a "material fact for use in determining rights to a medical benefit," and a violation of Utah Code Annotated § 26-20-3(2).

127. According to U.C.A. 26-20-4, it is illegal to pay a kickback to induce the "*purchasing*, leasing, or ordering *of any goods* or services *for which payment is or may be made*

in whole or in part *pursuant to a medical benefit program* " Utah Code Annotated § 26-20-4(2)(a)(emphasis added). The discounts, rebates and other price concessions paid by Defendants to providers are clearly considered "kickbacks", which is defined by U.C.A. 26-20-4(1) as "rebates, compensation, or any other form of remuneration."

128. The claims at issue were made for the medical benefit of Utah Medicaid recipients. By injecting false prices into Utah's reimbursement process, the Defendants directed others to submit claims which led to false reimbursements. Each and every Defendant derived benefits directly from the State, in that the State's Medicaid expenditures ultimately ended up in the pockets of the Defendants.[2]

129. The false prices reported by Defendants' "caused to be made or presented to an employee or officer of the State a claim for a medical benefit" in violation of U.C.A. § 26-20-7(1). Specifically, the Defendants knew their false prices would result in the presentation of claims that are, "wholly or partially false, fictitious, or fraudulent", in violation of U.C.A. § 26-20-7(1)(a), and would "represent charges at a higher rate than those charged by the provider to the general public," in violation of U.C.A. § 26-20-7(1)(d).

130. Defendants also "retained unauthorized payment as a result of acts" described in U.C.A. § 26-20-7.

131. Under Utah Code Annotated § 26-20-9.5, Defendant is liable for the following damages:

a. Full and complete restitution to the State of all damages that the State sustained;

b. the costs of enforcement, including but not limited to the cost of investigators and attorneys;

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[2] *Industry Facts-at-a-Glance*, National Association of Chain Drug Stores (NACDS), http://www.nacds.org/wmspage.cfm?parm1=507 (accessed March 26, 2009).

c. a civil penalty equal to three times the restitution amount: and

d. a civil penalty of $5,000 to $10,000 for each false claim filed.

132. These costs and penalties are in addition to and not a substitute for other damages caused by Defendants' actions.

SECOND CLAIM FOR RELIEF

(Fraudulent Misrepresentation)

133. Plaintiff incorporates paragraphs 1 through 138 as if fully set forth herein, and further alleges as follows:

134. Defendants committed fraud against the State and its single state agency administering Utah Medicaid, the Utah Department of Health. Defendants reported or caused to be reported false AWP, WAC and/or other pricing information for their respective products on a periodic and continuing basis for publication and dissemination to third party payers, including Utah Medicaid and other state Medicaid programs. Defendants knew that the AWP, WAC and/or other pricing information that they provided and caused to be reported was false and material to the determination of Utah Medicaid reimbursement rates.

135. Defendants misrepresented the pricing information with the intent of inducing Utah Medicaid to rely on the false information in setting prescription drug reimbursement rates.

136. Utah Medicaid reasonably relied on the false pricing data in setting prescription drug reimbursement rates and making payment based on said rates. Defendants' misrepresentations are continuing, as they regularly and periodically continue to issue false and

inflated AWP, WAC and/or pricing information for publication by the industry reporting services.

137. As a result of Defendants' fraudulent conduct, the State has been damaged by paying grossly excessive amounts for Defendants' prescription drugs.

138. By engaging in the acts and practices described above, the Defendants have engaged and continue to engage in repeated fraudulent acts and practices in violation of Utah common law.

139. Defendants' conduct was and is knowing, intentional, gross, oppressive, malicious, wanton, and/or committed with the intention to cause injury. These actions subject Defendants to an award of punitive damages sufficient to punish the Defendants and deter others from similar fraudulent conduct.

JURY DEMAND

The State respectfully requests a trial by jury pursuant to Rule 38, Utah R. Civ. Proc.

PRAYER FOR RELIEF

Wherefore, Plaintiff, the State of Utah, prays for relief as follows:

1. For costs of enforcement pursuant to § 26-20-9.5(2)(b), Utah Code Ann.;
2. For an award of full and complete restitution to the State in such amount as is proved at trial;
3. For punitive damages for the wanton and reckless conduct as outlined herein and as an example for the benefit of all other drug manufacturers that wrongly misrepresent the prices of their products to the detriment of Utah Medicaid;
4. For civil penalties pursuant to § 26-20-9.5(2)(c), Utah Code Ann., equal to:
   a. Three times the restitution amount; and

b. $5,000 to $10,000 for each false claim filed with Utah Medicaid.

5. For an award of costs and prejudgment interest; and

6. For such other and further relief as may be justified and which Plaintiff may be entitled to by law including, but not limited to, all court costs, witness fees and deposition fees.

DATED: April 1st, 2009.

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CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the Second Amended Complaint upon the following counsel of record by placing the same in the United States mail, properly addressed and first class postage prepaid on this the 6th of April, 2009.

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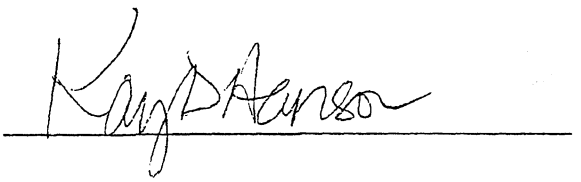

A0150

EXHIBIT A

EXHIBIT A

Through the following list, the State of Utah intends to capture not only the drug names listed, but also all variations of the drug names which incorporate prefixes, suffixes, modifiers, supplements, application nomenclatures and/or drug delivery methods, to the extent not already specified.

APOTEX DEFENDANTS
ACYCLOVIR
ALENDRONATE
AMLODIPINE
BALSALAZID
BENAZEPRIL
BETAXOLOL
BUPROPION
BUTORPHANOL
CAPTOPRIL
CARBAMAZEPINE
CARBIDOPA
CARVEDILOL
CEFAZOLIN
CEFEPIME
CEFOXITIN
CEFTRIAXON
CEFUROXIME
CETIRIZINE
CHLORHEXIDINE
CICLOPIROX
CILOSTAZOL
CIMETIDINE
CIPROFLOXA
CITALOPRAM
CLARITHROM
CLONAZEPAM
CLOPIDPGREL
CROMOLYN
CYCLOSPORINE
DESMOPRESS
DICLOFENAC
DILTIAZEM
DIVALPROEX
DOXAZOSIN
ENALAPRIL
EPLERENONE
ETODOLAC
FLUCONAZOLE
FLUNISOLIDE
FLUOXETINE
FLUPHENAZINE
FLUTICASON
FLUVOXAMINE
GABAPENTIN
GEMFIBROZIL
GLIPIZIDE
HALOPERIDOL

EXHIBIT A

IPRATROPIUM
KETOCONAZOLE
KETOTIFEN
LACTULOSE
LEFLINOMID
LISINOPRIL
LITHIUM CA
LORATADINE
LOVASTATIN
MEGESTROL
MELOXICAM
METFORMIN
MIDAZOLAM
MIDODRINE
MIRTAZAPINE
MORPHINE
NIZATIDINE
OFLOXACIN
OMEPRAZOLE
ONDANSETRON
OXAPROZIN
OXCARBAZEPINE
OXYBUTYNIN
PAROXETINE
PENTOXIFYLLINE
PRAVASTATIN
QUINAPRIL
RANITIDINE
SELEGILINE
SERTRALINE
SOTALOL
TERAZOSIN
TICLOPIDIN
TIMOLOL
TIZANIDINE
TOBRAMYCIN
TORSEMIDE
TRAMADOL
TRAZODONE
TRIAMETERENE
TRIANTERENE
ZINISAMIDE
ZOLPIDEM F
ZONISAMIDE
BAXTER DEFENDANTS
ACETIC ACID
ALDOCLOR
ALDOMET
ALDORIL
AMERINET
AMIKACIN
AMINOACETI

EXHIBIT A

AMINOPHYLL
AMPICILLIN
AQUA-MEPHY
ARALAST
ATIVAN
ATROPINE
AZITHROMYC
BEBULIN
BENEMID
BLOCADREN
BUMINATE
CANCIDAS
CEFAZOLIN
CEFOXITIN
CEFTRIAXON
CEFUROXIME
CERNEVIT
CHIBROXIN
CHLORPROMA
CLINDAMYCI
CLINORIL
COGENTIN
COL-BENEMI
CORTONE
COSMEGEN
COSOPT
COZAAR
CRIXIVAN
CUPRIMINE
CYANOCOBAL
CYCLOPHOSP
DARANIDE
DECADRON
DECASPRAY
DEMSER
DEXAMETHAS
DEXTROSE
DIAZEPAM
DIGOXIN
DIPHENHYDR
DIUPRES
DIURIL
DOLOBID
DOXYCYCLIN
DURAMORPH
EDECRIN
ELAVIL
ELSPAR
EMEND
EPINEPHRIN
ERYTHROMYC
FAMOTIDINE

EXHIBIT A

FEIBA VH I	
FENTANYL C	
FLEXERIL	
FLOROPRYL	
FOSAMAX	
FUROSEMIDE	
GAMMAGARD	
GENTAMICIN	
GLYCOPYRRO	
HEMOFIL	
HEPARIN	
HEP-LOCK	
HEPTAVAX-B	
HUMORSOL	
HYDELTRA	
HYDROCORTI	
HYDRODIURI	
HYDROMORPH	
HYDROPRES-	
HYDROXYZIN	
HYZAAR	
INDOCIN	
INFUMORPH	
INTRALIPID	
INVANZ	
INVERSINE	
ISENTRESS	
JANUMET	
JANUVIA	
KETOROLAC	
LACRISERT	
LACTATED	
LIDOCAINE	
LORAZEPAM	
LOSEC	
MAXALT	
MEFOXIN	
MEPERIDINE	
MEPHYTON	
METHYLDOPA	
METOCLOPRA	
METRONIDAZ	
MEVACOR	
MIDAMOR	
MIDAZOLAM	
MILRIONONE	
MINTEZOL	
M-M-R II V	
MODURETIC	
MONISTAT D	
MORPHINE	
MUSTARGEN	

EXHIBIT A

MYOCHRYSIN
NALLPEN
NEODECADRO
NEOSTIGMIN
NOROXIN
NUTREN
ONDANSETRO
OXYTOCIN 1
PENICILLIN
PEPCID
PERIACTIN
PHENERGAN
PHENOBARBI
PHENYTOIN
PLENDIL
PNEUMOVAX
POTASSIUM
PRILOSEC
PRIMAXIN
PRINIVIL
PRINZIDE
PROCHLORPE
PROMETHAZI
PROPECIA
PROSCAR
RECOMBINAT
RECOMBIVAX
REGLAN 5MG
REPLETE
RINGER'S L
ROBINUL
SINEMET
SINGULAIR
SODIUM CHL
STERILE WATER
STROMECTOL
SULFAMETHO
SYPRINE
THIAMINE
TIMOLIDE
TIMOPTIC
TONOCARD
TRANSDERM
TRAVASOL
TRAVASORB
TRIAVIL
TRUSOPT
URECHOLINE
VANCOCIN
VANCOMYCIN
VAQTA
VASERETIC

EXHIBIT A

VASOTEC
VIOXX
VIVACTIL
WATER
ZOCOR
ZOSTAVAX
BOEHRINGER DEFENDANTS
ACARBOSE
ACETAMINOPHEN
ACETAZOLAM
ACETYLCYST
ACYCLOVIR
ADRIAMYCIN
AGGRENOX
ALBUTEROL
ALPRAZOLAM
ALUMINUM
ALUPENT
AMIKACIN S
AMINOPHYLL
AMITRIPTYL
APTIVUS
ATROVENT
AZATHIOPRI
BALSALAZID
BUMETANIDE
BUTORPHANO
CAFCIT
CALC CARB
CALCIUM GLUCONATE
CALCITRIOL
CALCIUM CARBONATE
CATAPRES
CERUBIDINE
CHLORAL HY
CHLORPHENI
CHLORPROMA
CILOSTAZOL
CIMETIDINE
CIPROFLOXA
CISPLATIN
CITALOPRAM
CLADRIBINE
CLARITHROM
CLINDAMYCI
CLOTRIMAZO
COCAINE HC
CODEINE 15
CODEINE PH
CODEINE SU
COMBIPRES
COMBIVENT

EXHIBIT A

CROMOLN
CROMOLYN
CYCLOPHOSP
CYCLOSPORI
CYTARABINE
DEXAMETHASONE
DIHYDROTACHSTEROL
DIAZEPAM
DICLOFENAC
DIFLUNISAL
DIGOXIN
DIHYDROERGOTAMINE
DIPHENHYDR
DIPHENOXYL
DOCUSATE
DOLOPHINE
DOXORUBICI
DOXYCYCLIN
DULCOLAX
DURACLON
ENALAPRILA
FAMOTIDINE
FELCAINIDE
FERROUS SU
FLECAINIDE
FLOMAX
FLUCONAZOL
FLUPHENAZI
FLUTICASON
FOLIC ACID
FUROSEMIDE
GLUCAGEN
GUAIFENESI
HALOPERIDO
HYDROCHLOR
HYDROMORPH
HYDROXYURE
IMIPRAMINE
INDOMETHAC
IODINATED
IPRATROPIU
ISOETHARIN
KAOLIN-PEC
KETAMINE H
KETOROLAC
LABETALOL
LACTULOSE
LACTULOSE
LEUCOVORIN
LEVOCARNIT
LEVORPHANO
LEVOTHYROX

EXHIBIT A

LITHIUM CARBONATE	
LITHIUM CITRATE	
LOPERAMIDE	
LORAZEPAM	
MARINOL	
MEFLOQUINE	
MEGESTROL	
MELOXICAM	
MEPERID 50	
MEPERIDINE	
MERCAPTOPU	
MESNA INJE	
METAPROTER	
METHADONE	
METHOTREX	
METHYLDOPA	
METHYLPRED	
METOCLOP	
METOCLOPRA	
METOPROLOL	
MEXILETINE	
MEXITIL	
MICARDIS	
MIDAZOLAM	
MILK OF MA	
MIRAPEX	
MIRTAZAPIN	
MITOMYCIN	
MOBIC	
MORPHINE SULFATE	
MORPHINE	
NAPROX SUSPEN	
NAPROXEN	
NEFAZODONE	
NEOMYCIN	
OCTREOTIDE	
ONDANSETRO	
ORAMORPH	
OXCARBAZEP	
OXYCODONE	
PACLITAXEL	
PAMIDRONAT	
PAPAVERINE	
PERSANTINE	
PHENOBARBI	
PHENTOLAMI	
PILOCARPIN	
PIROXICAM	
POLYMYXIN	
POTASSIUM CHLORIDE	
PREDNISONE	
PROCHLORPE	

EXHIBIT A

PROPANTHEL
PROPOXYPHE
PROPRAN
PROPRANOLO
PSEUDO TAB
PSEUDOEPHE
QUINIDINE
RANITIDINE
RESPBID
RIFAMPIN
ROPINIROLE
ROXAN
ROXANOL
ROXICET
ROXICODONE
ROXILOX
ROXIPRIN
SALIVA SUB
SERENTIL
SERTRALINE
SODIUM POLY SULFONATE
SODIUM CHLORIDE
SODIUM POLYSTYRENE SULFONATE
SPIRIVA
STERILE AC
SULFAMETHOXAZOLE
TAMOXIFEN
THEOPHYLLI
THIORIDAZI
THIOTHIXEN
TORECAN
TORSEMIDE
TRIAZOLAM
VINBLASTIN
VIRAMUNE
ZALEPLON
ZIDOVUDINE
ZOLPIDEM T
CSL BEHRING DEFENDANTS
ACTHAR H P
ALBUMINAR
AQUASOL A
ARM-A-VIAL
BIOCLATE
CARIMUNE
DIALUME
GAMMAR
HELIXATE
HUMATE-P
M V I PED
MONOCLATE
MONONINE

EXHIBIT A

RHOPHYLAC
STIMATE
VIVAGLOBIN
ZEMAIRA
FOREST DEFENDANTS
AEROBID
AEROCHAMBE
AMBENYL
APAP/HYDRO
ARMOUR THY
BANCAP
BENZONATAT
BETACHRON
BUCET
BUTALBITAL
BYSTOLIC
CAMPRAL
CARBAMAZEP
CEBOCAP
CELEXA
CITALOPRAM
COMBUNOX
DILTIAZEM
ELIXOPHYLL
ENDAL
ESGIC
FEOSTAT
FLUMADINE
HYDROCODON
INDOCHRON
INDOMETHAC
ISOSORBIDE
KAY CIEL
LEVOTHROID
LEXAPRO
LORCET
MONUROL
NAMENDA
NITROGARD
PARAL
PEDAMETH
PROPRANOLO
PYOCIDIN
RIMANTADIN
SUS-PHRINE
TESSALON P
THEOCHRON
THEOPHYLLI
THYROLAR
TIAZAC
TRIAD
UAD OTIC EAR SU

EXHIBIT A

VERTAB
ZONE-A
MALLINCKRODT DEFENDANTS
ACETAMINOPHEN
AMPHETAMINE
ANAFRANIL
ANAGRELIDE
ANEXSIA
ATENOLOL
AZATHIOPRI
BENZONATAT
BUTALBITAL
COCAINE HYDROCHLORIDE
CODEINE PH
DEXTROAMPH
DIPHENOXYL
FLUOXETINE
HYDOCODONE
HYDROMORPH
IMIPRAMINE
MAGNACET
MELOXICAM
MEPERIDINE
METFORMIN
METHADONE
METHADOSE
METHYLIN E
METHYLPHEN
MORPHINE
M-OXY
NALTREXONE
OXYCODONE
PAMELOR 50
PEMADD
PEMOLINE
PENTAZOCIN
PROMETHAZI
PROPADE
PROPOXYPHE
RESTORIL
RIBAVIRIN
SIMVASTATI
TEMAZEPAM
TOFRANIL
TRAMADOL
TUSSIZONE
WARFARIN
MORTON GROVE DEFENDANTS
ACETAMINOPHEN
ACETIC ACID
ACIDULATED
AMANTADINE

EXHIBIT A

BROMAXEFED
BROMODIPHE
CARBAMAZEP
CARBAXEFED
CARBINOXAM
CHLORAL HYRATE
CIMEDTIDIN
CIMETIDINE
CLEMASTINE
CLINDAMYCI
CLOBETASOL
C-PHED
CYCLOSPORI
DEC-CHLORPHEN
DECOHISTIN
DEXAMETHAS
DIPHEN
DOCUSATE S
DOXEPIN HC
ERYTHROMYCIN
FERROUS SULF
FLUOXETINE
FUROSEMIDE
GENERLAC
GUAIFENESI
HYDROCODONE
HYDROXYZINE
HYOSCYAMINE
LACTULOSE
LIDOCAINE
LINDANE
LITHIUM CARBONATE
MEGESTROL
METAPROTERENOL
METOCLOPRAMIDE
MORPHINE
MULTI-VITAM
MYPHETANE
MYTUSSIN
NYSTATIN
OXYBUTYNIN
PAREGORIC
PHENCLOR
PHENOBARBI
PHENYTOIN
POTASSIUM
PREDNISOLONE
PROMETHAZINE
PYRILAFEN
SELENIUM S
TANNIHIST
TETRA TANN

EXHIBIT A

THEOPHYLLINE
TRIAMCINOL
TRIPLE TAN
TRIPLE VITA
TRIPROLIDINE
VALPROIC A
MUTUAL PHARMACEUTICAL DEFENDANTS
ACETAMINOPHEN
ACETAZOLAM
ALBUTEROL
ALLOPURINOL
AMANTADINE
AMITRIPTYL
AMPHETAMIN
ASPIRIN
ATENOLOL
BENZTROPIN
BETHANECHO
BISOPROLOL
CARBAMAZEP
CARISOPRODOL
CHLORDIAZE
CHLORTHALID
CHLORZOXAZONE
CLONIDINE
CYCLOBENZAPRINE
DIPHENHYDRAMINE
DOXEPIN
DOXYCYCLIN
ERGOLOID
FELODIPINE
FLUOXETINE
FOLIC ACID
GABAPENTIN
GUAIFENESIN
HYDRALAZINE
HYDROCODONE
HYDROXYZINE
HYOSCYAMINE
IBUPROFEN
IMIPRAMINE
INDOMETHAC
KETOCONAZOLE
LABETALOL
LORAZEPAM
LOVASTATIN
MECLIZINE
MELOXICAM
METFORMIN
METOPROLOL
METRONIDAZOLE
MINOXIDIL

EXHIBIT A

MULTIHIST
NYSTATIN
ORDRINE
PANCRELIPASE
PIROXICAM
PREDNISONE
PRIMIDONE
PROPAFENON
PROPOXYPHENE
QUINIDINE
SALSALATE
SPIRONOLAC
SULFASALAZ
SULFISOXAZ
SULINDAC
THEOPHYLLINE
THIORIDAZINE
TOLAZAMIDE
TOLMETIN
TRAMADOL
TRAZODONE
TRIMETHOBENZAMIDE
VERAPAMIL
ZOLPIDEM
ZONISAMIDE
NOVARTIS DEFENDANTS
ACTIGALL
ANAFRANIL
ANTURANE
APRESOLINE
AREDIA
ASBRON G
ASCRIPTIN
ATROPISOL
AZMACORT
BELLERGAL
BETIMOL
BRETHAIRE
BRETHANCER
BRETHINE
BUTAZOLIDI
CAFERGOT
CATAFLAM
CERUBIDINE
CIBACALCIN
CIBALITH-S
CLEMASTINE
CLOZARIL
COMBIPATCH
COMTAN
CONSTANT-T
CYTADREN

EXHIBIT A

CYTARABINE
D.H.E 45
DENAVIR
DESENEX AF
DESFERAL
DEXACIDIN
DIAPID NAS
DIOVAN
DOXORUBICI
DULCOLAX
DYNACIRC
EFIDAC
EFLONE
ELIDEL
ENABLEX
ESERINE SU
ESIDRIX
ESIMIL
ESTRADERM
EXELON
EXFORGE FC
EXJADE
EX-LAX MIL
FAMVIR
FEMARA
FIORICET
FIORINAL
FIORTAL
FLUOR-OP
FOCALIN
FORADIL AE
GENTACIDIN
GENTEAL
GLEEVEC
GLUCOSE
HABITROL
HOMATROPIN
HYDERGINE
HYPOTEARS
INFLAMASE
ISMELIN
KLORVESS
LAMISIL
LAMPRENE
LESCOL
LIORESAL
LITHOBID
LIVOSTIN
LOPRESSOR
LOTENSIN
LOTREL
LUDIOMIL

EXHIBIT A

MAALOX	
MELLARIL	
MESANTOIN	
METAPREL	
METHERGINE	
METOPIRONE	
METOPROLOL	
MIACALCIN	
MIGRANAL	
MYFORTIC	
NEO-CALGLU	
NEORAL SOL	
NICOTINE	
NUPERCAINA	
OCUPRESS	
OSCO NTS 1	
PAMELOR	
PAREPECTOL	
PARLODEL	
PERDIEM FIBER	
PILOCAR	
PROLEUKIN	
RECLAST	
REGITINE	
RESCULA	
RESTORIL	
RIMACTANE	
RITALIN	
SANDIMMUNE	
SANDOGLOBULIN	
SANDOSTATIN	
SANSERT	
SER-AP-ES	
SERPASIL	
SLO-BID 10	
SLO-PHYLLI	
SLOW FE	
SLOW-K	
STALEVO	
STARLIX 60	
SULF-10	
SYNTOCINON	
TASIGNA HG	
TAVIST	
TEARISOL	
TEGRETOL	
TEKTURNA H	
TEN-K	
TETRACAINE	
TEXTURNA	
THIORIDAZINE	
TOBI	

EXHIBIT A

TOFRANIL
TOMYCINE
TRANSDERM
TRIAMINIC
TRIAMTEREN
TRILEPTAL
VASOCIDIN
VASOCINE
VASOCON
VASOSULF
VISKEN
VISUDYNE
VIVELLE
VOLTAREN
ZADITOR
ZELNORM
ZOMETA
PFIZER DEFENDANTS
ACCUPRIL
ACCURETIC
ACETAMINOPHEN
ACTH
ACTIVELLA
ADRENALIN
ADRIAMYCIN
ADRUCIL
ALDACTAZID
ALDACTONE
ALPRAZOLAM
AMBIEN
AMINOPHYLL
AMITRIPTYL
AMLODIPINE
AMOXICILLINE
AMPHOCIN
AMPICILLINE
ANSAID
ANTIMINTH
ANTIVERT
ANUSOL
APLISOL
APLITEST
AROMASIN
ARTHROTEC
ASPIRIN
ATARAX
AXERT
AXOTAL
AZITHROMYC
AZULFIDINE
BACITRACIN
BANTHINE

EXHIBIT A

BENADRYL
BENYLIN
BEXTRA
BLEOMYCIN
BREVICON
BRONDECON
CABERGOLIN
CADUET
CALAN
CAMPTOSAR
CARDURA
CAVERJECT
CEFOBID PI
CELEBREX
CELONTIN
CENTRAX
CEREBYX
CHANTIX
CHERACOL
CHILDREN'S
CHLOROMYCE
CHLORPROMA
CHOLEDYL
CHOLYBAR
CLEOCIN
CLEOCIN
CLINDAMYCI
CLONIDINE
COGNEX
COLESTID
COLESTIPOL
COLY-MYCIN
CORTAID
CORTEF
CORTISONE
COVERA
CYCLOBENZA
CYTOSAR
CYTOTEC
DAYPRO
DELTASONE
DEMULEN
DEPO PROVE
DEPO-ESTRA
DEPO-MEDRO
DEPO-PROVE
DEPO-SUBQ
DEPO-TESTA
DETROL
DIABINESE
DIAZEPAM
DIDREX

EXHIBIT A

DIFLUCAN
DILANTIN
DIPENTUM
DIPHENOXYL
DIULO
DORYX
DOSTINEX
DOXIDAN
DOXYCYCLIN
DRAMAMINE
EASPRIN
ELASE
EMCYT
EMETE-CON
EMETROL
E-MYCIN
EPLERENONE
ERAXIS
ERGOSTAT
ERYC
ERYTHROMYC
ESTRING
ESTROSTEP
ESTROVIS
EUTHROID
EXUBERA
FELDENE
FEMHRT
FEMINONE
FEMPATCH
FERROUS SU
FLAGYL
FLAVORED C
FLUCONAZOL
FLUOGEN
FLURBIPROF
FRAGMIN
FUROSEMIDE
GABAPENTIN
GELUSIL
GENOTROPIN
GEOCILLIN
GEODON
GLIPIZIDE
GLUCOTROL
GLYBURIDE
GLYNASE
GLYSET 50M
HALCION
HALOPERIDO
HALOTESTIN
HEPARIN SO

EXHIBIT A

HUMATIN
HYDROCHLOR
IBUPROFEN
INDOMETHAC
INSPRA
KAO LECTRO
KAOCHLOR
KAON
KAOPECTATE
KERLONE
KETALAR
K-LEASE
LACTULOSE
LEOSTRIN 2
LEOSTRIN F
LEVORA-28
LEVSIN DRO
LINCOCIN
LIPITOR
LOESTRIN
LOMOTIL
LONITEN
LOPID
LUNELLE
LYRICA
MANDELAMIN
MAOLATE
MAXAQUIN
MECLOMEN
MEDROL
MEDROXYPRO
METAMUCIL
METHYLDOPA
METHYLPRED
MICRONASE
MICRONIZED
MILONTIN
MINIPRESS
MINIZIDE 1
MIRAPEX
MISOPROSTO
MODANE
MOTRIN
MYCOBUTIN
NARDIL
NATABEC RX
NAVANE
NEO-CORTEF
NEOSAR
NEURONTIN
NICOTROL
NITRODISC

EXHIBIT A

NITROL
NITROSTAT
NORETHIN
NORINYL
NORLESTRIN
NORLUTATE
NORPACE
NOR-Q-D
NORVASC
OGEN
OMNICEF
OPHTHOCORT
ORINASE
OXAPROZIN
PANMYCIN
PARSIDOL
PEDIACARE
PENICILLIN
PERMAPEN
PFIZERPEN
PHENOBARBI
PIROXICAM
PITOCIN
PITRESSIN
POLYMYXIN
PONSTEL
PRO-BANTHI
PROCAN SR
PROCAINAMIDE
PROCARDIA
PROLOID
PROSTIN
PROVERA
PYRIDIUM
QUINAPRIL
QUINIDINE
QUININE SU
RELPAX
RENESE
RESCRIPTOR
REVATIO
REZULIN
R-GENE 10
SERTRALINE
SINEQUAN
SINUBID
SLOW-MAG
SODIUM CHL
SOLU-CORTE
SOLU-MEDRO
SPIRONOLAC
STREPTOMYC

EXHIBIT A

SULFASALAZ	
SULFASALZI	
SURFAK	
SUSTAIRE	
SUTENT	
SYNAREL	
SYTOBEX	
TABRON	
TAO	
TEDRAL	
TERRA-CORT	
TERRAMYCIN	
TETRACYCLI	
THEELIN	
THEO	
TIKOSYN CA	
TOLINASE	
TRIAZOLAM	
TRI-NORINY	
TRIVORA	
TROVAN	
TYMPAGESIC	
UNASYN	
UTICORT	
VAGIFEM	
VANTIN	
VERAPAMIL	
VFEND	
VIAGRA	
VIBRAMYCIN	
VIBRA-TABS	
VINCASAR	
VIRA-A	
VIRACEPT	
VISTARIL	
XALATAN SS	
XANAX	
ZARONTIN	
ZINECARD	
ZINECARDS	
ZITHROMAX	
ZMAX	
ZOLOFT	
ZYRTEC	
ZYVOX	
QUALITEST DEFENDANTS	
A/B OTIC	
ACETAMINOPHEN	
ACETAZOLAM	
ACETIC ACID	
ACIDIC VAG	
ALBUTEROL	

EXHIBIT A

ALLOPURINO
AMANTADINE
AMILORIDE
AMITRIPTYL
AMOXAPINE
AMOXICILLI
AMPICILLIN
ANTACID
ANTIBIOTIC
APAP
ASPIRIN-LO
ATENOLOL
ATROPINE S
BACLOFEN
BENZONATAT
BENZOYL PE
BENZTROPIN
BETAMETHAS
BETHANECHO
BISACODYL
BROMANYL
BROMATAPP
BROMOPHED
BROMPHENIR
BROMUPHED
BUFFERED A
BUTALBITAL
CALCIUM AN
CARBAMAZEP
CARBIDOPA/
CARDEC
CARISOPROD
CEFACLOR
CEPHALEXIN
CEPHRADINE
CERVICAL A
CHERATUSSI
CHLORAL HY
CHLORAMPHE
CHLORDIAZE
CHLOROTHIA
CHLORPHENI
CHLORPROMA
CHLORPROPA
CIMETIDINE
CLEMASTINE
CLINDAMYCI
CLONAZEPAM
CLONIDINE
CLORAZEPAT
CLOTRIMAZO
CLOXACILLI

EXHIBIT A

CODAMINE	
CODITUSS D	
COLCHICINE	
CORTISONE	
CYCLOBENZA	
CYPROHEPTA	
DECONESTIN	
DECONGEST	
DESIPRAMIN	
DESOXIMETA	
DETUSSIN	
DEXAIR	
DEXAMETHAS	
DEXCHLORPH	
DIAZEPAM	
DICLOXACIL	
DICYCLOMIN	
DIGOXIN	
DILTIAZEM	
DIMENHYDRI	
DIPHENHYDR	
DIPHENOXYL	
DIPYRIDAMO	
DISOPYRAMI	
DISULFIRAM	
DOC-Q-LACE	
DOXEPIN HC	
DOXYCYCLIN	
DREXOPHED	
DRITUSS DM	
DRITUSS	
EAR-GESIC	
ENTERIC CO	
ERGOLOID M	
ERYTHROMYC	
ESTROPIPAT	
FENOPROFEN	
FERROUS SU	
FLOURIDE C	
FLUOCINOLO	
FLUOCINONI	
FLUORIDE D	
FLUPHENAZI	
FLURAZEPAM	
FLURBIPROF	
FOAMING ANTACID	
FOLIC ACID	
FUROSEMIDE	
GENTAFAIR	
GENTAMICIN	
GLIPIZIDE	
GLYBURIDE	

EXHIBIT A

GRANUL-DER
GUAIFEN PS
GUAIFENESI
GUAIFEN-PS
GUAIVENT
GUANFACINE
HALOPERIDO
HC TUSSIVE
HDROCODONE
HEMORRHOIDAL
HYDORCODONE
HYDRALAZINE
HYDROCHLOR
HYDROCODONE
HYDROCORTISONE
HYDROMORPH
HYDROXYZIN
HYOSCYAMIN
IBUPROFEN
IMIPRAMINE
INDOMETHAC
INSULIN SY
IOPHEN
ISOSORBIDE
K EFFERVES
K+ POTASSIUM
K-EFFERVES
KETOPROFEN
LACTULOSE
LEUCOVORIN
LEVOTHYROX
LIDOCAINE
LINDANE
LITHIUM CA
LOPERAMIDE
LORAZEPAM
LOXAPINE S
MAPROTILIN
MATERNITY
MECLIZINE
MECLOFENAM
MEDROXYPRO
MEGESTROL
MEPERIDINE
MEPERITAB
MEPROBAMAT
METAPROTER
METHAZOLAM
METHOCARBA
METHOTREXA
METHYLDOPA
METHYLPHENIDATE

EXHIBIT A

METHYLPRED	
METOCLOPRA	
METRONIDAZ	
MINOCYCLIN	
MINOXIDIL	
MULTI VIT	
MULTI-BRET	
MYLACARE	
NAPHAZOLIN	
NAPROXEN	
NATURAL VE	
NEO-DEX	
NEOPTIC	
NIACIN TD	
NIFEDIPINE	
NITROFURAN	
NITROGLYCE	
NOLPHENAMI	
NYSTATIN	
OCTICAINE	
OCUTRICIN	
ORGAN-I	
OR-PHEN-AD	
OR-PRIN	
OTICAINE	
OTIGESIC O	
OXAZEPAM	
OXYBUTYNIN	
OXYCODONE	
PANASE	
PAPAVERINE	
PAREGORIC	
PEMOLINE	
PENICILLIN	
PERPHENAZINE	
PHENAZOPYRIDINE	
PHENOBARBI	
PHENTERMINE	
PHENYLHISTINE	
PILOCARPIN	
PINDOLOL	
PINK BISMUTH	
PIROXICAM	
POLY CS	
POLY-D	
POLY-DM	
POTASSIUM	
PRAZOSIN H	
PREDNISOLONE	
PREDNISONE	
PRENATAL	
PRIMIDONE	

EXHIBIT A

PROBENECID
PROCAINAMIDE
PROCTOSERT
PROMETHAZINE
PROPAFENON
PROPOXYPHENE
PROPRANOLO
PSEUDOEPHE
Q NOL 325
Q-BID
Q-DRYL
Q-FED
Q-MIBID
Q-NOL
Q-PAP
Q-PROFEN
Q-TUSSIN
QUINDAL
QUINIDINE
QUININE
QUINTEX
R-TANNAMIN
SALSALATE
SELENIUM S
SENNA LAX
SILVER SUL
SODIUM FLUORIDE
SODIUM SULF
SORBITOL
SOTALOL
SPIRONOLAC
SUCRALFATE
SULFACETAM
SULFAMETHO
SULFASALAZ
SULFATRIM
SULFAZINE
SULFISOXAZ
SULINDAC
SULPRED
SUR-Q LAX
TEMAZEPAM
TETRACYCLI
THEOPHYLLINE
THERMAZENE
THEROBEC
THIORIDAZINE
THIOTHIXEN
THYROID
TOBRAMYCIN
TOLBUTAMID
TOLMETIN S

EXHIBIT A

TRAZODONE
TRIACTIN
TRIAMCINOL
TRIAMTEREN
TRIAZOLAM
TRICOSAL
TRIHEXYPHE
TRIMETHOPRIM
TRIPLE ANTIBIOTIC OINTMENT
TRIPLE SUL
TRI-VITAMIN
TRIXAICIN
URINARY ANTISEPTIC
URSODIOL
VALPROIC A
VEGETABLE LAX
VERAPAMIL
VICA-FORTE
VI-Q TUSS
YOHIMBINE
Z+PRENATAL
ZOCORT HC
ZOLENE HC
ZOTANE HC
SCHERING DEFENDANTS
ADALAT
AEROBID
AFRIN
ALBUTEROL
AMOXICILLIN
ASMANEX
AUGMENTED BETAMETHASONE
AVELOX IV
AVELOX TAB
BETAMETHAS
BILTRICIDE
CEDAX
CELESTONE
CHLOR-TRIM
CIMETIDINE
CIPRO
CLARINEX
CLARITIN
CLOTRIMAZO
DERMOLATE
DIPROLENE
DIPROSONE
DRIXORAL
ELOCON
EMKO
ESTINYL
ETRAFON

EXHIBIT A

EULEXIN
FEMCARE
FORADIL
FULVICIN P
GARAMYCIN
GLYBURIDE
GRISEOFULV
GYNE-LOTRI
IMDUR
INSPIREASE
INSPIREASE
INTRON
ISOSORBIDE
K-DUR
LABETALOL
LEVITRA
LOTRIMIN
LOTRISONE
METICORTEN
METIMYD
MEXILETINE
MIRADON
MOL-IRON
MOMETASONE
NAQUA
NASONEX
NASONEX NA
NITRO-DUR
NONOXYNOL
NORMODYNE
NORMOZIDE
NOXAFIL PO
OPTIMINE
ORETON MET
OTOBIOTIC
OXAPROZIN
PAXIPAM
PEG-INTRON
PERMITIL
PERPHENAZI
POLARAMINE
POTASSIUM
PROVENTIL
REBETOL
REBETRON 1
RELA
RIBAVIRIN
SEBIZON
SODIUM SUL
SOLGANAL
SUCRALFATE
TEMODAR

EXHIBIT A

THEO-DUR	
THEOPHYLLI	
TINACTIN	
TRILAFON	
TRINALIN	
UNI-DUR	
VALISONE	
VANCENASE	
VANCERIL	
SCHWARTZ DEFENDANTS	
CALCIFEROL	
CODICLEAR	
CODIMAL	
CO-GESIC	
COLYTE	
CORTIFOAM	
DEPONIT	
DILATRATE	
EDEX	
EPIFOAM	
FEDAHIST	
GLYCOLAX	
GUAIMAX-D	
HYDROCODONE	
HYOSCYAMINE	
ISOSORBIDE	
KUTAPRESSI	
KUTRASE	
KU-ZYME	
LACTRASE	
LEVATOL	
LEVBID	
LEVSIN	
LEVSINEX	
MILKINOL	
MOEXIPRIL	
MONOKET	
NASCOBAL	
NEUPRO	
NIFEDIPINE	
NIFEREX	
NIRAVAM TA	
NITROCINE	
NULEV	
OMEPRAZOLE	
PARCOPA	
PEDIAPAP	
PEG 3350	
PROCTOCREA	
PROCTOFOAM	
PSEUDOEPHEDRIN	
REGLAN	

EXHIBIT A

ROBAXIN
THEOCLEAR
TRILYTE
UNIRETIC
UNIVASC
URSO
VERAPAMIL
VERELAN
TARO DEFENDANTS
ACETAZOLAMIDE
ACETIC ACID
ALCLOMETASONE
AMCINONIDE
AMIODARONE
AMMONIUM
ANTIPYRINE
BETAMETHASONE
CARBA SUSP
CARBAMAZEP
CICLOPIROX
CIPROFLOXACIN
CLINDAMYCIN
CLOBETASOL
CLOMIPRAMINE
CLOREZAPATE
CLOTRIM
CLOTRIMAZOLE
DESONIDE
DESOXIMETASONE
DIFLORASON
ECONAZOLE
ELIXSURE
ENALAPRIL
ETODOLAC
ETOLODAC
FLUCONAZOLE
FLUOCINOLONE
FLUOCINONIDE
FLUOROURAC
FLUTICASON
GENTAMICIN
HALOBETASOL
HYDROCORTISONE
KETOCONAZOLE
LIDOCAINE
LORATADINE
MICONAZOLE
MOMETASONE
MUPIROCIN
NYSTATIN
ORALONE
OVIDE

EXHIBIT A

PHENYTOIN
RX EAR DRO
RX-OTIC
TERCONAZOLE
TOPICORT
TRIAMCINOL
TRIPLE ANTIBIOTIC
UCORT
WARFARIN
UPSHER-SMITH DEFENDANTS
ACETAMINOPHEN
ALTINAC
ASPIRIN
BISACODYL
CLENIA
DIVALPROEX
DIVIGEL
DOCUSATE
FERATAB
FERROUS SULF
FEVERALL
FOLGARD
FOLIC ACID
FORTICAL
GEMCOR
KLOR-CON
MIDODRINE
OMS
PACERONE
PENTOXIL
POTASSIUM
PREVALITE
RMS-SUPPOS
SALSITAB
SORBITOL
SSKI
VANDAZOLE
ZINC SULFATE
WYETH DEFENDANTS
A.P.L.
ACEBUTOLOL
ACEL-IMUNE
ACETAMINOPHEN
ACHROMYCIN
ACYCLOVIR
ADVIL
ALAVERT
ALBUTEROL
ALESSE
ALLOPURINO
ALPRAZOLAM
ALUDROX

EXHIBIT A

AMICAR
AMIKACIN S
AMILORIDE
AMINOPHYLL
AMITRIPTYL
AMOXICILLIN
AMPHOJEL
AMPICILLIN
ANACIN
ANA-GUARD
ANA-KIT
ANTABUSE
ANTIVENIN
ARISTOCORT
ARTANE
ARTHRITIS
ASENDIN
ATENOLOL
ATIVAN
ATROMID
ATROPINE
AURALGAN
AXID
AYGESTIN
BASALJEL
BENEFIX
BENZTROPIN
BICILLIN
BISOPROLOL
BUTORPHANO
CALTRATE-6
CAPTOPRIL
CARAFATE
CARBAMAZEP
CARDIZEM
CEFACLOR
CEFAZOLIN
CENTRUM JR
CEPHALEXIN
CEPHRADINE
CERUBIDINE
CHILDREN'S ADVIL
CHLORDIAZEPOXIDE
CHLORPHENIR
CHLORPROMAZ
CHLORPROPAM
CHLORTHALID
CIMETIDINE
CLINDAMYCIN
CLONIDINE
CLORAZEPATE
CLOXACILLIN

EXHIBIT A

CODEINE PH
CORDARONE
COUMADIN
CVC HEPARI
CYANOCOBAL
CYCLOCORT
CYCLOPHOSPH
CYCRIN
DECLOMYCIN
DEPONIT
DEXAMETHAS
DEXTROSE
DIAMOX
DIAZEPAM
DICLOXACIL
DICYCLOMIN
DIGOXIN
DILTIAZEM
DIMETANE
DIMETAPP
DIPHENHYDR
DIPHENOXYL
DIPHTHERIA
DIPYRIDAMOLE
DOCUSATE
DOLENE
DONNAGEL-P
DONNAZYME
DOXEPIN HC
DOXYCYCLIN
DTP C & A
DTP DM C&C
DURACT
DURAMORPH
EFFEXOR
ENTOZYME
EPINEPHRIN
EQUAGESIC
EQUANIL
ERYTHROMYC
ESTRADIOL
ESTROGENIC
ETODOLAC
FACTREL
FAMOTIDINE
FENOPROFEN
FENTANYL
FERRO-SEQU
FERROUS
FIBERCON
FILIBON
FLUIMMUNE

EXHIBIT A

FLURAZEPAM
FOLVITE
FUROSEMIDE
GEMFIBROZI
GENTAMICIN
GRISACTIN
GRISEOFULVIN
GUAIFENESIN
GUANFACINE
HALOPERIDO
HCTZ/RESER
HEPARIN
HEP-LOCK
HIB-IMUNE
HYDRALAZIN
HYDROCHLOR
HYDROCODONE
HYDROCORTIZONE
HYDROMORPH
HYDROXYZIN
IBUPROFEN
IMIPRAMINE
INDERAL
INDERIDE
INDOMETHAC
INFLUENZA
INFUMORPH
ISMO
ISORDIL
ISOSORBIDE
KERODEX
KETOPROFEN
LEDERCILLIN
LEUCOVORIN
LEVO-T
LEVOTHYROX
LIDOCAINE
LO/OVRAL
LODINE
LORAZEPAM
LOXITANE
LYBREL
MATERNA
MAXZIDE
MECLIZINE
MECLOFENAMATE
MEDROXYPRO
MEPERGAN
MEPERIDINE
METHAZOLAMIDE
METHENAMIN
METHOCARBA

EXHIBIT A

METHOTREXA
METHYCLOTH
METHYLDOPA
METOCLOPRA
METRONIDAZ
MICRO-K
MIDAZOLAM
MINOCIN
MINOCYCLIN
MITROLAN
MORPHINE
MYAMBUTOL
MYSOLINE
NAPRELAN
NAPROXEN
NENMEGA
NEPTAZANE
NEUMEGA
NILSTAT
NITROGLYCE
NORDETTE-2
NORPLANT
NOVANTRONE
OCUCOAT
OMNIPEN
OPIUM
ORIMUNE DI
ORUDIS
ORUVAIL
OVRAL-21
OVRETTE
OXAZEPAM
PANTOPRAZO
PAPAVERINE
PATHOCIL
PENTOBARBI
PENTOXIFYL
PEN-VEE K
PHENAPHEN
PHENERGAN
PHENOBARBI
PHENYTOIN
PHOSPH IO
PHOSPHOLIN
PIPRACIL
PIROXICAM
PNU-IMUNE
PONDIMIN
POSTURE
POTASSIUM
PRAZOSIN H
PREDNISONE

EXHIBIT A

PREMARIN
PREMPHASE
PREMPRO
PRENATAL PLUS
PRIMATENE
PRISTIQ EX
PROBENECID
PROCHLORPER
PROMETHAZINE
PROPOXYPHENE
PROPRANOLOL
PROPYLTHIOURACIL
PROSTEP
PROTONIX
PYRAZINAMIDE
QUINIDEX
QUINIDINE
RAPAMUNE
REGLAN
RHEUMATREX
RIOPAN
ROBAXIN
ROBAXISAL
ROBICILLIN
ROBIMYCIN
ROBINUL
ROBITET
ROBITUSSIN
SECTRAL
SELEGILINE
SEMICID
SERAX
SODIUM CHL
SONATA
SPARINE
SPIRONOLAC
STORZ-DEXA
STUART PRE
STUARTNATA
SULFAMETHO
SULFASALAZINE
SULINDAC
SUPRAX
SURMONTIL
SYNALGOS
TEMAZEPAM
TENEX
TETANUS DI
THEOPHYLLINE
THIAMINE H
THIORIDAZINE
THYROID

EXHIBIT A

TOBRAMYCIN	
TODAY SPONGE	
TOLAZAMIDE	
TOLBUTAMIDE	
TRAZODONE	
TRI-IMMUNO	
TRIPHASIL	
TUBERCULIN	
TUBEX INJ	
TYGACIL IN	
UNIPEN	
VANCOLED	
VANCOMYCIN	
VERAPAMIL	
VIOKASE	
WYAMYCIN	
WYCILLIN	
WYDASE	
WYGESIC	
WYMOX	
WYTENSIN	
Z-BEC	
ZEBETA	
ZIAC	
ZOSYN	